



City of Chicago



SO2019-3236

Office of the City Clerk

Document Tracking Sheet

Meeting Date: 4/10/2019

Sponsor(s): Emanuel (Mayor)

Type: Ordinance

Title: Amendment No. 2 to 24th/Michigan Redevelopment Area Tax Increment Allocation Financing (TIF) Redevelopment Program and Project with Southbridge 4 Master Owner LLC, TCB Development Services and Southbridge 1-4 Housing LLC for residential development at 2310 S State St

Committee(s) Assignment: Committee on Finance

SUBSTITUTE ORDINANCE

WHEREAS, the City of Chicago (the "City"), a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois, has heretofore found and does hereby find that there exists within the City a serious shortage of decent, safe and sanitary rental housing available to persons of low and moderate income; and

WHEREAS, the City has determined that the continuance of a shortage of affordable rental housing is harmful to the health, prosperity, economic stability and general welfare of the City; and

WHEREAS, the City has certain funds available from a variety of funding sources ("Multi-Family Program Funds") to make loans and grants for the development of multi-family residential housing to increase the number of families served with decent, safe, sanitary and affordable housing and to expand the long-term supply of affordable housing, and such Multi-Family Program Funds are administered by the City's Department of Planning and Development ("DPD"); and

WHEREAS, DPD has preliminarily reviewed and approved the making of a loan to Southbridge 4 Master Owner LLC, an Illinois limited liability company (the "Borrower" or the "Master Owner"); the sole member of the Borrower is Ickes Master Developer JV LLC, an Illinois limited liability company (the "Master Developer"); the members of the Master Developer are The Community Builders, Inc., a Massachusetts charitable corporation, doing business in Illinois as TCB Illinois NFP, Inc. ("TCB"), and MI Ickes LLC, a Delaware limited liability company ("MI Ickes"); the loan to the Borrower will be in an amount not to exceed \$2,397,958 (the "Loan") to be funded from Multi-Family Program Funds pursuant to the terms and conditions set forth in Exhibit A attached hereto and made a part hereof; and

WHEREAS, prior to the closing, if DPD determines that it is necessary due to condominium ownership structure of the Property (as defined on Exhibit A) DPD may agree to make the Loan to an affiliated entity of the Borrower, approved by DPD in its sole discretion; and

WHEREAS, pursuant to an ordinance adopted by the City Council on July 21, 1999, a certain redevelopment plan and project (the "Plan") for the 24th/Michigan Tax Increment Financing Redevelopment Project Area (the "Area") was approved pursuant to the Illinois Tax Increment Allocation Redevelopment Act, as amended (65 ILCS 5/11-74.4-1 et seq.) (the "Act"); and

WHEREAS, pursuant to an ordinance adopted by the City Council on July 21, 1999, the Area was designated as a redevelopment project area pursuant to the Act; and

WHEREAS, pursuant to an ordinance adopted by the City Council on July 21, 1999, tax increment allocation financing was adopted pursuant to the Act as a means of financing certain Redevelopment Project Costs (as defined in the Act) incurred pursuant to the Plan; and

WHEREAS, pursuant to an ordinance adopted by the City Council on February 16, 2000, the Plan was amended to make a correction to the legal description of the Area; and

WHEREAS, Public Act 91-478 (the "Amendatory Act"), which became effective

November 1, 1999, amended the Act, among other things, to (i) change the dates set forth in Section 11-74.4-3(n)(3) of the Act by which redevelopment projects must be completed and obligations issued to finance redevelopment project costs must be retired to be no later than December 31 of the year in which the payment to the municipal treasurer as provided in Section 11-74.4-8(b) of the Act is to be made with respect to ad valorem taxes levied in the twenty-third calendar year after the year in which the ordinance approving a redevelopment project area is adopted, and (ii) provide that a municipality may amend an existing redevelopment plan to conform such redevelopment plan to Section 11-74.4-3(n)(3) of the Act, as amended by the Amending Act, by an ordinance adopted without further hearing or notice and without complying with the procedures provided in the Act pertaining to an amendment to or the initial approval of a redevelopment plan and project and designation of a redevelopment project area; and

WHEREAS, the City now desires to amend the Plan to conform the Plan to Section 11-74.4-3(n)(3) of the Act, as amended by the Amending Act, in accordance with the procedures set forth in amended Section 11-74.4-3(n)(3); and

WHEREAS, Public Act 92-263, which became effective on August 7, 2001, amended the Act to provide that, under Section 11-74.4-5(c) of the Act, amendments to a redevelopment plan which do not (1) add additional parcels of property to the proposed redevelopment project area, (2) substantially affect the general land uses proposed in the redevelopment plan, (3) substantially change the nature of the redevelopment project, (4) increase the total estimated redevelopment project cost set out in the redevelopment plan by more than 5% after adjustment for inflation from the date the plan was adopted, (5) add additional redevelopment project costs to the itemized list of redevelopment project costs set out in the redevelopment plan, or (6) increase the number of inhabited residential units to be displaced from the redevelopment project area, as measured from the time of creation of the redevelopment project area, to a total of more than 10, may be made without further hearing, provided that notice is given as set forth in the Act as amended; and

WHEREAS, the City desires to further amend the Plan by making revisions to descriptive language in the general land use section and the estimated redevelopment project cost sections which such amendment shall not (1) add additional parcels of property to the Area, (2) substantially affect the general land uses proposed in the Plan, (3) substantially change the nature of the redevelopment project, (4) increase the total estimated redevelopment project cost set out in the Plan by more than 5% after adjustment for inflation from the date the Plan was adopted, (5) add additional redevelopment project costs to the itemized list of redevelopment project costs set out in the Plan, or (6) increase the number of inhabited residential units to be displaced from the Area, as measured from the time of creation of the Area, to a total of more than 10; and

WHEREAS, the Master Owner, as landlord, and Southbridge 1-4 Housing LLC, an Illinois limited liability company (the "Master Tenant"), or such other entity deemed acceptable to DPD's Commissioner (the "Commissioner"), as tenant, plan to enter into a long-term master lease with respect to approximately fifty-one (51) affordable housing units in the Project (as described on Exhibit A); and

WHEREAS, pursuant to Resolution 18-CDC-18 adopted by the Community Development Commission of the City (the "Commission") on July 10, 2018, the Commission has recommended that the Master Developer, together with its affiliates (collectively, hereafter

referred to as the "Developer") be designated as the developer for the Project described in Exhibit A hereto, and that DPD be authorized to negotiate, execute and deliver on behalf of the City a redevelopment agreement with the Developer; and

WHEREAS, the Project is necessary for the redevelopment of the Area; and

WHEREAS, the Developer will be obligated to undertake the Project in accordance with the terms and conditions of a proposed redevelopment agreement to be executed by the Developer, and the City, with such Project to be financed in part by certain pledged incremental taxes deposited from time to time in the Special Tax Allocation Fund for the Area (as defined in the TIF Ordinance) pursuant to Section 5/11-74.4-8(b) of the Act; and now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated in and made a part of this ordinance as though fully set forth herein.

SECTION 2. "Amendment Number 2 to the 24th/Michigan Redevelopment Area Tax Increment Allocation Finance Program Redevelopment Plan and Project" ("Amendment Number 2"), a copy of which is attached hereto as Exhibit B, is hereby approved. Except as amended hereby, the Plan shall remain in full force and effect.

SECTION 3. Upon the approval and availability of the Additional Financing as shown in Exhibit A, the Commissioner and a designee of the Commissioner (collectively, the "DPD Officer") are each hereby authorized, subject to approval by the Corporation Counsel, to enter into and execute such agreements and instruments, and perform any and all acts as shall be necessary or advisable in connection with the implementation of the Loan. The DPD Officer is hereby authorized, subject to the approval of the Corporation Counsel, to negotiate any and all terms and provisions in connection with the Loan which do not substantially modify the terms described in Exhibit A. Upon the execution and receipt of proper documentation, the DPD Officer is hereby authorized to disburse the proceeds of the Loan to the Borrower and/or its affiliated entity.

SECTION 4. Section 2-44-080 of the Municipal Code of Chicago shall not apply to the Project or the Property, as hereinafter defined in Exhibit A.

SECTION 5. Developer is hereby designated as the developer for the Project pursuant to Section 5/11-74.4-4 of the Act.

SECTION 6. The Commissioner or a designee of the Commissioner are each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver a redevelopment agreement between the Developer and the City in connection with payment of the Redevelopment Project Costs with the TIF funds, substantially in the form attached hereto as Exhibit C and made a part hereof (the "Redevelopment Agreement"), and such other supporting documents as may be necessary to carry out and comply with the provisions of the Redevelopment Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Redevelopment Agreement.

SECTION 7. The Mayor, the Chief Financial Officer, the City Clerk, the Commissioner (or his or her designee) and the other officers of the City are authorized to execute and deliver

on behalf of the City such other documents, agreements and certificates and to do such other things consistent with the terms of this ordinance as such officers and employees shall deem necessary or appropriate in order to effectuate the intent and purposes of this ordinance.

SECTION 8. At such time as the City's Commissioner of Housing (the "DOH Commissioner") makes a determination in accordance with Section 2-44-040(c) of the Municipal Code of Chicago: (i) except as provided in (ii) below, all references in this Ordinance to the "Department of Planning and Development," "DPD," the "Commissioner" or the "DPD Officer" shall be deemed to be references to the City's Department of Housing or the DOH Commissioner, as applicable; and (ii) notwithstanding the foregoing in (i), all references to "Department of Planning and Development" or "DPD" or "Commissioner" or "DPD Officer" in this Ordinance with respect to authorization of the Redevelopment Agreement, or ancillary documents and actions pertaining to the Redevelopment Agreement, shall remain references to "Department of Planning and Development" or "DPD" or "Commissioner" or "DPD Officer," as applicable.

SECTION 9. To the extent that any ordinance, resolution, rule, order, or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause, or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause, or provision shall not affect any of the other provisions of this ordinance.

SECTION 10. This ordinance shall be effective as of the date of its passage and approval.

EXHIBIT A

LOAN AND ADDITIONAL FINANCING TERMS

BORROWER: Southbridge 4 Master Owner LLC, an Illinois limited liability company ("Master Owner"), and/or Southbridge 1-4 Housing LLC, an Illinois limited liability company ("Master Tenant") (Master Owner and Master Tenant referred to herein individually or collectively as the "Borrower"); the sole owner of Master Owner is Ickes Master Developer JV LLC, an Illinois limited liability company (the "Master Developer"), and The Community Builders, Inc., a Massachusetts charitable corporation, doing business in Illinois as TCB Illinois NFP, Inc. ("TCB"), is the majority member and managing member of the Master Developer; the sole manager of the Master Tenant will be Southbridge 1 Housing MM LLC, an Illinois limited liability company (the "Manager").

PROJECT: Acquisition and construction of a mixed-use building located at 2310 South State Street, Chicago, Illinois (the "Property") to contain approximately 103 residential housing units of which 51 units shall be for affordable housing, and 52 market-rate units, and related site infrastructure costs. In addition, the building will contain approximately 10,000 square feet of ground floor retail space and parking spaces. The 51 affordable housing units will be leased by the Master Owner to the Master Tenant, pursuant to a long-term lease. The Property on which the Project will be constructed will be ground leased by the Chicago Housing Authority to an affiliate of the Master Owner, or such other entity deemed acceptable to the Commissioner, and that affiliate or other entity, through one or more transactions, will assign or sub-lease to Master Owner the rights of the ground lessee under that ground lease.

LOAN: Source: Multi-Family Program Funds
Amount: Not to exceed \$2,397,958
Term: Not to exceed 44 years or such other term acceptable to the Commissioner
Interest: Not to exceed 3% per annum or such other interest rate acceptable the Commissioner
Security: Non-recourse loan; junior mortgage on the Property (the "City Mortgage")

ADDITIONAL FINANCING:

- 1. Amount:** Not to exceed \$31,000,000 or such other amount to which the Commissioner may consent (the "Senior Loan") which is anticipated to be reduced to a principal amount of approximately \$7,400,000 upon loan conversion
Term: Not to exceed 44 years or such other term acceptable to the Commissioner
Source: Citibank, N.A. or such other entity as may be acceptable to the Commissioner to be funded through the issuance of multi-family housing revenue bonds or notes issued by the Illinois Housing

- Development Authority, or other entity other than the City and acceptable to the Commissioner
- Interest: Not to exceed 6.0 percent per annum or such interest rate acceptable to the Commissioner
- Security: Mortgage senior to the lien of the City Mortgage
2. Amount: Not to exceed \$1,800,000 or such other amount to which the Commissioner may consent (the "Mezzanine Loan")
- Term: Not to exceed 44 years or such other term as is acceptable to the Commissioner
- Source: New Hope Community Capital, Inc. or an entity acceptable to the Commissioner
- Interest: Not to exceed 6.0 percent per annum or such other interest rate acceptable to the Commissioner
- Security: Mortgage on the Property senior to the lien of the City Mortgage
3. Amount: Not to exceed \$7,400,000 or such other amount to which the Commissioner may consent
- Term: Not to exceed 44 years or such other term acceptable to the Commissioner
- Source: Illinois Housing Development Authority ("IHDA") or such other entity as may be acceptable to the Commissioner
- Interest: Not to exceed 6.0 percent per annum or such other interest rate acceptable to the Commissioner
- Security: Mortgage on the Property senior to the lien of the City Mortgage
4. Amount: Not to exceed \$4,875,000 or such other amount to which the Commissioner may consent
- Term: Not to exceed 44 years or such other term acceptable to the Commissioner
- Source: IHDA or such other entity as may be acceptable to the Commissioner
- Interest: Not to exceed 3.0 percent per annum or such other interest rate acceptable to the Commissioner
- Security: Mortgage on the Property senior to the lien of the City Mortgage
5. Amount: Not to exceed \$11,355,106 or such other amount to which the Commissioner may consent
- Term: Not to exceed 44 years or such other term acceptable to the Commissioner
- Source: Chicago Housing Authority ("CHA") or such other entity as may be acceptable to the Commissioner
- Interest: Not to exceed 3.0 percent per annum or such other interest rate acceptable to the Commissioner
- Security: Mortgage on the Property senior to the lien of the City Mortgage

6. Amount: Not to exceed \$12,750,000* or such amount as may be acceptable to the Commissioner
 Term: Not to exceed 44 years or such other entity as may be acceptable to the Commissioner
 Source: TCB Development Services LLC, an Illinois limited liability company ("TCBDS"), or TCB Southbridge Acquisition LLC, an Illinois limited liability company ("TCBSA"), or such other entity as may be acceptable to the Commissioner
 Interest: Not to exceed 4.0 percent per annum or such other interest rate acceptable to the Commissioner
 Security: Mortgage on the Property junior to the City Mortgage

*loan amount consists of the cash payments made to TCBDS or TCBSA under the Redevelopment Agreement; all or a portion of the loan proceeds will be used to repay the Senior Loan (to the permanent loan amount)

7. Amount: Approximately \$2,299,909 or such other amount to which the Commissioner may consent
 Source: Illinois Affordable Housing Tax Credits proceeds loaned by TCBDS, TCB or CHA or other entity acceptable to the Commissioner
 Term: Not to exceed 44 years or such other term acceptable to the Commissioner
 Interest: Not to exceed 4.0 percent per annum or such other interest rate acceptable to the Commissioner
 Security: A mortgage on the Property junior to the lien of the City Mortgage

8. Low-Income Housing Tax Credit ("LIHTC")
 Proceeds:

Approximately \$8,831,373* or such other amount to which the Commissioner may consent, to be provided by the LIHTC investor to the Master Tenant

- Source: To be derived from the syndication of approximately \$910,542 annual LIHTC generated by the multi-family housing revenue bond funding

*a portion of the LIHTC proceeds to be used to repay the Senior Loan (to the permanent Senior Loan amount) and the Mezzanine Loan

9. Amount: \$10,100
 Source: Manager

EXHIBIT B

AMENDMENT NUMBER 2 TO THE 24TH/MICHIGAN REDEVELOPMENT AREA TAX INCREMENT ALLOCATION FINANCE PROGRAM REDEVELOPMENT PLAN AND PROJECT

NOTICE is hereby given by the City of Chicago of the publication and inclusion of changes to the City of Chicago 24th/Michigan Tax Increment Financing Redevelopment Plan and Project (as amended by this Amendment Number 2, the "Plan") for the 24th/Michigan Redevelopment Project Area approved pursuant to an ordinance enacted by the City Council in May, 2019 pursuant to Section 5/11-74.4-5 of the Illinois Tax Increment Allocation Redevelopment Act, as amended, 65 ILCS Section 5/11-74.4-1 et seq. (the "Act").

1. *In Section 5 entitled, "24th/Michigan Redevelopment Project", in sub-section A, entitled "General Land Use Plan", in numerate 1, entitled "Residential/Public Facility/Institutional", the first two paragraphs shall be deleted and replaced with:*

The proposed residential/public facility/institutional land use is proposed for the area between Cullerton Avenue, Wentworth Street, Cermak Road, and State Street. This area is currently residential and it is recommended that it remain residential.

Public Facility includes uses such as parks, open space, public housing and publicly owned facilities. The proposed residential/public facility land use includes the Chicago Housing Authority Public property (Hilliard Homes).

2. *In Section 5 entitled, "24th/Michigan Redevelopment Project", in sub-section A, entitled "General Land Use Plan", in numerate 4, entitled "Mixed Use Commercial/Residential/Institutional", the second sentence in the first paragraph shall be deleted and replaced with:*

This use is proposed for a small area in Chinatown between the CTA tracks west to the western boundary of the Redevelopment Project Area and for the former Harold Ickes Homes which is Cermak to the north, State Street to the east, 25th Street to the south, and Dearborn Street to the west.

3. *In Section 5 entitled, "24th/Michigan Redevelopment Project", in sub-section C, entitled "Estimated Redevelopment Project Activities and Costs", in numerate 11, entitled "Interest Costs", sub-section e) shall be added:*

e) Up to 75 percent of the interest cost incurred by redeveloper for the financing of rehabilitated or new housing for low-income households and very low-income households, as defined in Section 3 of the Illinois Affordable Housing Act.

4. *In Section 5 entitled, "24th/Michigan Redevelopment Project", in sub-section C, entitled "Estimated Redevelopment Project Activities and Costs", in numerate 12, entitled "New Construction Costs", shall be deleted and replaced with:*

12. NEW CONSTRUCTION COSTS. Instead of the eligible costs provided for in (11) b, d and e above, the City may pay up to 50 percent of the cost of construction, renovation and/or rehabilitation of all low- and very low-income housing units (for ownership or rental) as defined in Section 3 of the Illinois Affordable Housing Act. If the units are part of a residential redevelopment project that includes units not affordable to low- and very low-income households, only the low- and very low-income units shall be eligible for benefits under the Act;

5. *In Section 5 entitled, "24th/Michigan Redevelopment Project", in sub-section C, entitled "Estimated Redevelopment Project Activities and Costs", the second sentence in the last paragraph prior to Table 1 shall be deleted and replaced with:*

These upper limit expenditures are potential costs to be expended over the life of the Redevelopment Project Area.

6. *In Section 5 entitled, "24th/Michigan Redevelopment Project", in sub-section C, entitled "Estimated Redevelopment Project Activities and Costs", "Table 1 – ESTIMATED REDEVELOPMENT PROJECT COSTS" and associated footnotes shall be deleted and replaced with:*

Table 1 - ESTIMATED REDEVELOPMENT PROJECT COSTS

Eligible Expense	Estimated Cost
Analysis, Administration, Studies, Surveys, Legal, Marketing, etc.	\$1,000,000
Property Assembly including Acquisition, Site Prep and Demolition, Environmental Remediation	\$7,000,000
Rehabilitation of Existing Buildings, Fixtures and Leasehold Improvements, Affordable Housing Construction and Rehabilitation cost	\$35,568,950
Public Works & Improvements, including streets and utilities, parks and open space, public facilities (schools & other public facilities) ^[1]	\$20,500,000
Relocation Costs	\$1,000,000
Job Training, Retraining, Welfare-to-Work	\$5,500,000
Interest Subsidy	\$6,000,000
TOTAL REDEVELOPMENT COSTS^{[2] [3]}	\$87,568,950^[4]

¹This category may also include paying for or reimbursing (i) an elementary, secondary or unit school district's increased costs attributed to assisted housing units, and (ii) capital costs of taxing districts impacted by the redevelopment of the Project Area. As permitted by the Act, to the extent the City by written agreement accepts and approves the same, the City may pay, or reimburse all, or a portion of a taxing district's capital costs resulting from a redevelopment project necessarily incurred or to be incurred within a taxing district in furtherance of the objectives of the Plan.

²Total Redevelopment Project Costs represent an upper limit on expenditures that are to be funded using tax increment revenues and exclude any additional financing costs, including any interest expense, capitalized interest and costs associated with optional redemptions. These costs are subject to prevailing market conditions and are in addition to Total Redevelopment Project Costs. Within this limit, adjustments may be made in line items without amendment to this Plan, to the extent permitted by the Act.

³The amount of the Total Redevelopment Project Costs that can be incurred in the Project Area will be reduced by the amount of redevelopment project costs incurred in contiguous redevelopment project areas, or those separated from the Project Area only by a public right-of-way, that are permitted under the Act to be paid, and are paid, from incremental property taxes generated in the Project Area, but will not be reduced by the amount of redevelopment project costs incurred in the Project Area which are paid from incremental property taxes generated in contiguous redevelopment project areas or those separated from the Project Area only by a public right-of-way.

⁴All costs are in 1999 dollars and may be increased by five percent (5%) after adjusting for inflation reflected in the Consumer Price Index (CPI) for All Urban Consumers for All Items for the Chicago-Gary-Kenosha, IL-IN-WI CMSA, published by the U.S. Department of Labor.

Additional funding from other sources such as federal, state, county, or local grant funds may be utilized to supplement the City's ability to finance Redevelopment Project Costs identified above.

7. *In Section 5 entitled, "24th/Michigan Redevelopment Project", in sub-section E, entitled "Issuance of Obligations", the first sentence in the second paragraph shall be deleted and replaced with:*

The redevelopment project shall be completed, and all obligations issued to finance redevelopment costs shall be retired, no later than December 31 of the year in which the payment to the City treasurer as provided in the Act is to be made with respect to ad valorem taxes levied in the twenty-third calendar year following the year in which the ordinance approving the 24th/Michigan RPA was adopted.

8. *In Section 5 entitled, "24th/Michigan Redevelopment Project", in sub-section N, entitled "Phasing and Scheduling of Redevelopment", the last sentence of the paragraph shall be deleted.*
9. *In Exhibit 4 "Map Legend", Map 3 entitled "Proposed Land Use" shall be replaced with an updated "Map 3", "Proposed Land Use".*

EXHIBIT C
FORM OF
REDEVELOPMENT AGREEMENT

See attached pages.

This agreement was prepared by and after recording return to:

Crystal Maher, Esq.
Senior Counsel
City of Chicago Law Department
121 North LaSalle Street, Room 600
Chicago, IL 60602

SOUTHBRIDGE 4 MASTER OWNER LLC REDEVELOPMENT AGREEMENT

Southbridge 4 Master Owner LLC Redevelopment Agreement (this "**Agreement**") is made as of this ___ of _____, 20___, by and among the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of Planning and Development ("**DPD**"), Southbridge 4 Master Owner LLC, an Illinois limited liability company (the "**Developer**"), and TCB Development Services, an Illinois limited liability company ("**TCB**"), wholly owned by The Community Builders, Inc., a Massachusetts not for profit corporation, and Southbridge 1-4 Housing LLC, an Illinois limited liability company ("**Southbridge 1-4**"). The Developer, TCB and Southbridge 1-4 may collectively be referred to hereinafter as the "**Developer Parties**."

RECITALS

A. Constitutional Authority: As a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois (the "**State**"), the City has the power to regulate for the protection of the public health, safety, morals and welfare of its inhabitants, and pursuant thereto, has the power to encourage private development in order to enhance the local tax base, create employment opportunities and to enter into contractual agreements with private parties in order to achieve these goals.

B. Statutory Authority: The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as amended from time to time (the "**Act**"), to finance projects that eradicate blighted conditions and conservation area factors through the use of tax increment allocation financing for redevelopment projects.

C. City Council Authority: To induce redevelopment pursuant to the Act, the City Council of the City (the "**City Council**") adopted ordinances on July 21, 1999: (1) approving a redevelopment plan (the "**Redevelopment Plan**") for the 24th/Michigan Redevelopment Project Area (the "**Area**"); (2) designating the Area as a Redevelopment Project Area pursuant to the Act; and (3) adopting tax increment allocation financing for the Area (the "**TIF Adoption Ordinance**") (items (1)-(3) collectively referred to herein as the "**TIF Ordinances**"). The redevelopment project area referred to above (the "**Redevelopment Area**") is legally described in **Exhibit A** hereto.

To induce redevelopment pursuant to the Act, the City Council adopted the following ordinances on July 30, 1997: (1) "An Ordinance of the City of Chicago, Illinois Approving a Tax Increment Redevelopment Plan for the River South Redevelopment Project Area;" (2) "An Ordinance of the City of Chicago, Illinois Designating the River South Redevelopment Project Area as a Tax Increment Financing District;" and (3) "An Ordinance of the City of Chicago,

Illinois Adopting Tax Increment Allocation Financing for the River South Redevelopment Project Area” (the “**River South TIF Adoption Ordinance**”) (items (1)-(3) collectively referred to herein as the “**River South TIF Ordinances**,” the redevelopment plan approved by the River South TIF Ordinances is referred to herein as the “**River South Redevelopment Plan**” and the redevelopment project area created by the River South Ordinances is referred to herein as the “**River South Redevelopment Area**”).

D. The Project: The first phase of Southbridge will provide approximately two hundred six (206) residential housing units in twin mid-rise buildings which buildings are financed separately but concurrently. This Agreement relates to the financing of a sub-phase of that first phase, which sub-phase relates to that certain property owned or ground leased by the Developer and located within the Redevelopment Area commonly known at 2310 South State Street, Chicago, Illinois and legally described on **Exhibit B** hereto (the “**Property**”), and, within the time frames set forth in **Section 3.01** hereof, the Developer shall commence and complete the construction of one (1) mixed-use building on the Property which will consist of approximately one hundred three (103) residential housing units of which fifty-one (51) units shall be for low-and-moderate-income families, fifty-two (52) shall be market-rate units, approximately ten thousand (10,000) square feet, ground-floor commercial retail space constructed as a cold dark shell without tenant improvements, parking spaces, and related common areas (the “**Facility**”). The Facility and related improvements (including but not limited to those TIF-Funded Improvements as defined below and set forth on **Exhibit C** hereto) are collectively referred to herein as the “**Project**.” The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement.

The Property will be ground leased from the CHA (defined below) to TCB, or such other entity deemed acceptable to DPD’s Commissioner, pursuant to the Ground Lease (defined below) and TCB will assign its interest as lessee under the Ground Lease to the Developer. The Developer will sub-lease the fifty-one (51) affordable units to Southbridge 1-4 as the “**Master Tenant**,” pursuant to the Master Sub-Lease (defined below). For this Project, a condominium ownership structure will be used, and a condominium declaration will be executed and recorded once the units are constructed. It is anticipated that there will be seven (7) separate condominium units: one (1) unit consisting of the commercial space on the ground floor, one (1) unit consisting of all the market rate units in the Facility, and five (5) affordable condominium units (each affordable unit will consist of all the affordable units on a floor of the Facility).

E. Redevelopment Plan: The Project will be carried out in accordance with this Agreement and the Redevelopment Plan attached hereto as **Exhibit D** hereto.

F. City Financing: The City agrees to use, in the amounts set forth in **Section 4.03** hereof, Available Incremental Taxes (as defined below), to pay for or reimburse any of the Developer Parties for the costs of TIF-Funded Improvements pursuant to the terms and conditions of this Agreement.

In addition, as described in **Section 8.05** hereof, the City may, in its discretion, issue tax increment allocation bonds (“**TIF Bonds**”) secured by Incremental Taxes (as defined herein) pursuant to a TIF bond ordinance (the “**TIF Bond Ordinance**”), the proceeds of which (the “**TIF Bond Proceeds**”) may be used to pay for the costs of the TIF-Funded Improvements not previously paid for from Available Incremental Taxes, or in order to reimburse the City for the costs of TIF-Funded Improvements; provided, however, that any such amendments shall not

have a material adverse effect on the Developer Parties or the Project; provided, further, that the proceeds of TIF Bonds issued on a tax-exempt basis cannot be used as a source of City Funds or to repay the City Funds.

G. Transfer Rights: Pursuant to 65 ILCS 5/11-74.4-4(q) of the Act, the City can use incremental taxes (as hereinafter defined) from one redevelopment project area for eligible redevelopment project costs in another redevelopment project area that is either contiguous to, or is separated only by a public right of way from, the redevelopment project area from which those incremental taxes are received (the "**Transfer Rights**").

During the time period when the Redevelopment Area was contiguous with the River South Redevelopment Area, the City exercised its Transfer Rights pursuant to the Act and transferred a portion of the incremental taxes from the River South Redevelopment Area (the "**River South Incremental Taxes**") into the TIF Fund (as hereinafter defined) in order to make such incremental taxes available to fund certain TIF-Funded Improvements related to the Project, to the extent and in the manner hereinafter provided.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. RECITALS

The foregoing recitals are hereby incorporated into this agreement by reference.

SECTION 2. DEFINITIONS

For purposes of this Agreement, in addition to the terms defined in the foregoing recitals, the following terms shall have the meanings set forth below:

"Annual Compliance Report" shall mean a signed report from the Developer to the City (a) itemizing each of the Developer's obligations under the Agreement during the preceding calendar year, (b) certifying the Developer's compliance or noncompliance with such obligations, (c) attaching evidence (whether or not previously submitted to the City) of such compliance or noncompliance and (d) certifying that the Developer is not in default with respect to any provision of the Agreement, the agreements evidencing the Lender Financing, if any, or any related agreements; provided, that the obligations to be covered by the Annual Compliance Report shall include the following: (1) delivery of Financial Statements and unaudited financial statements (Section 8.12); (2) delivery of updated insurance certificates, if applicable (Section 8.13); (3) delivery of evidence of payment of Non-Governmental Charges, if applicable (Section 8.14); (4) compliance with the Affordable Housing Covenant, if applicable (Section 8.19); (5) compliance with the Occupancy Covenant (Section 8.23); and (6) compliance with all other executory provisions of the Agreement.

"Act" shall have the meaning set forth in the Recitals hereof.

"Affiliate" shall mean any person or entity directly or indirectly controlling, controlled by or under common control with the Developer Parties.

“Available Incremental Taxes” shall mean an amount equal to the Incremental Taxes deposited in the TIF Fund attributable to the taxes levied on the Redevelopment Area, plus any amounts of River South Incremental Taxes which were transferred into said fund pursuant to the Transfer Rights and this Agreement, all as of the date any payment is made under this Agreement to any of the Developer Parties and not pledged to the following prior obligations in the Redevelopment Area:

OBLIGATION

SBIF
TIF Works
Wells Wentworth Connector
CPS IGA – NTA Athletic Field
Streetscape – Michigan Av 23rd-24th
Hilliard Homes – I
Hilliard Homes – II

“Certificate” shall mean the Certificate of Completion of Construction described in **Section 7.01** hereof.

“CHA” shall mean Chicago Housing Authority, an Illinois municipal corporation.

“CHA Loan” shall mean the loan from the CHA to the Developer in the original principal amount referenced on **Exhibit H** hereto.

“Change Order” shall mean any amendment or modification to the Scope Drawings, Plans and Specifications or the Project Budget as described in **Section 3.03**, **Section 3.04** and **Section 3.05**, respectively.

“City Council” shall have the meaning set forth in the Recitals hereof.

“City Funds” shall mean the funds described in **Section 4.03(b)** hereof.

“Closing Date” shall mean the date of execution and delivery of this Agreement by all parties hereto, which shall be deemed to be the date appearing in the first paragraph of this Agreement.

“Construction Contract” shall mean that certain contract entered into between certain of the Developer Parties and the General Contractor providing for construction of the Project.

“Corporation Counsel” shall mean the City's Office of Corporation Counsel.

“Employer(s)” shall have the meaning set forth in **Section 10** hereof.

“Environmental Laws” shall mean any and all federal, state or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force, as amended and hereafter amended, including but not limited to (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.); (ii) any so-called

"**Superfund**" or "**Superlien**" law; (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1802 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6902 et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); and (x) the Municipal Code of Chicago, including but not limited to the Municipal Code of Chicago, Sections 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550, or 11-4-1560.

"**Equity**" shall mean funds of the any of the Developer Parties (other than funds derived from Lender Financing) irrevocably available for the Project, in the amount set forth in **Section 4.01** hereof, which amount may be increased pursuant to **Section 4.06** (Cost Overruns) or **Section 4.03(b)**.

"**Escrow**" shall mean the construction escrow established pursuant to the Escrow Agreement.

"**Escrow Agreement**" shall mean the Escrow Agreement establishing a construction escrow, entered into by the Title Company (or an affiliate of the Title Company), one or more of the Developer Parties, and the Developer's lenders.

"**Event of Default**" shall have the meaning set forth in **Section 15** hereof.

"**Facility**" shall have the meaning set forth in the Recitals hereof.

"**Financial Statements**" shall mean complete audited financial statements of the Developer Parties prepared by a certified public accountant in accordance with generally accepted accounting principles and practices consistently applied throughout the appropriate periods.

"**General Contractor**" shall mean McShane Powers Joint Venture, an Illinois joint venture.

"**Ground Lease**" shall mean the ground lease between the CHA and TCB (or other entity acceptable to DPD's Commissioner), as assigned, assumed and amended by and among CHA, TCB and Developer.

"**Hazardous Materials**" shall mean any toxic substance, hazardous substance, hazardous material, hazardous chemical or hazardous, toxic or dangerous waste defined or qualifying as such in (or for the purposes of) any Environmental Law, or any pollutant or contaminant, and shall include, but not be limited to, petroleum (including crude oil), any radioactive material or by-product material, polychlorinated biphenyls and asbestos in any form or condition.

"**HUD**" shall mean the United States Department of Housing and Urban Development.

"**Incremental Taxes**" shall mean such ad valorem taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11-74.4-8(b) of the Act, are allocated to and when collected are paid to the Treasurer of the City of Chicago for deposit by the Treasurer into the TIF Fund

established pursuant to the TIF Adoption Ordinance to pay Redevelopment Project Costs and obligations incurred in the payment thereof.

“Lender Financing” shall mean funds borrowed by the Developer from lenders and irrevocably available to pay for Costs of the Project, in the amount set forth in **Section 4.01** hereof and on **Exhibit H**. The loans will be secured by, among other things, leasehold mortgages on the Property.

“Managing Member” shall mean Southbridge 1 Housing MM LLC, an Illinois limited liability company, the managing member of Southbridge 1-4.

“Master Sub-Lease” shall mean the Master Sub-Lease between the Developer, as landlord, and Southbridge 1-4, as tenant in connection with the fifty-one (51) affordable units in the Project.

“MBE(s)” has the meaning defined in **Section 10.03**.

“MBE/WBE Program” has the meaning defined in **Section 10.03**.

“Municipal Code” shall mean the Municipal Code of the City of Chicago.

“Non-Governmental Charges” shall mean all non-governmental charges, liens, claims, or encumbrances relating to the Developer Parties, the Property or the Project.

“Permitted Liens” shall mean those liens and encumbrances against the Property and/or the Project set forth on **Exhibit G** hereto.

“Plans and Specifications” shall mean final construction documents containing a site plan and working drawings and specifications for the Project, as submitted to the City as the basis for obtaining building permits for the Project.

“Prior Expenditure(s)” shall have the meaning set forth in **Section 4.05(a)** hereof.

“Project” shall have the meaning set forth in the Recitals hereof.

“Project Budget” shall mean the budget attached hereto as **Exhibit H**, showing the total cost of the Project by line item, furnished by the Developer to DPD, in accordance with **Section 3.03** hereof.

“Property” shall have the meaning set forth in the Recitals hereof.

“Redevelopment Plan” shall have the meaning set forth in the Recitals hereof.

“Redevelopment Project Costs” shall mean redevelopment project costs as defined in Section 5/11-74.4-3(q) of the Act that are included in the budget set forth in the Redevelopment Plan or otherwise referenced in the Redevelopment Plan.

“Requisition Form” shall mean the document, in the form attached hereto as **Exhibit K**, to be delivered by the Developer to DPD pursuant to **Section 4.04** of this Agreement.

“Scope Drawings” shall mean preliminary construction documents containing a site plan and preliminary drawings and specifications for the Project.

“Senior Lender” shall mean Citibank, N.A., a national banking association.

“Senior Loan” shall mean the construction loan from Senior Lender to Developer in the original principal amount referenced on **Exhibit H**.

“Survey” shall mean a Class A plat of survey in the most recently revised form of ALTA/ACSM and title survey of the Property dated within 45 days prior to the Closing Date, acceptable in form and content to the City and the Title Company, prepared by a surveyor registered in the State of Illinois, certified to the City and the Title Company, and indicating whether the Property is in a flood hazard area as identified by the United States Federal Emergency Management Agency (and updates thereof to reflect improvements to the Property in connection with the construction of the Facility and related improvements as required by the City or lender(s) providing Lender Financing).

“Term of the Agreement” shall mean the period commencing on the Closing Date and ending on the date that is the thirty (30) year anniversary of the issuance of the Certificate.

“TIF Adoption Ordinance” shall have the meaning set forth in the Recitals hereof.

“TIF Bonds” shall have the meaning set forth in the Recitals hereof.

“TIF Bond Ordinance” shall have the meaning set forth in the Recitals hereof.

“TIF Bond Proceeds” shall have the meaning set forth in the Recitals hereof.

“TIF Fund” shall mean the special tax allocation fund created by the City pursuant to the TIF Adoption Ordinance in connection with the Area into which the Incremental Taxes will be deposited.

“TIF-Funded Improvements” shall mean those improvements of the Project which (i) qualify as Redevelopment Project Costs, (ii) are eligible costs under the Redevelopment Plan and (iii) the City has agreed to pay for out of the City Funds, subject to the terms of this Agreement. **Exhibit C** lists the TIF-Funded Improvements for the Project.

“TIF Ordinances” shall have the meaning set forth in the Recitals hereof.

“Title Company” shall mean Greater Illinois Title Company.

“Title Policy” shall mean a title insurance policy in the most recently revised ALTA or equivalent form, showing the Developer as the insured, noting the recording of this Agreement as an encumbrance against the Property issued by the Title Company.

“WARN Act” shall mean the Worker Adjustment and Retraining Notification Act (29 U.S.C. Section 2101 et seq.).

“WBE(s)” has the meaning defined in **Section 10.03**.

SECTION 3. THE PROJECT

3.01 The Project. With respect to the Facility, the Developer will: (i) begin redevelopment construction no later than six (6) months after the Closing Date, and (ii) complete redevelopment construction no later than thirty (30) months of the commencement of construction.

3.02 Scope Drawings and Plans and Specifications. The Developer has delivered the Scope Drawings and Plans and Specifications to DPD and DPD has approved same. After such initial approval, subsequent proposed changes to the Scope Drawings or Plans and Specifications shall be submitted to DPD as a Change Order pursuant to **Section 3.04** hereof. The Scope Drawings and Plans and Specifications shall at all times conform to the Redevelopment Plan and all applicable federal, state and local laws, ordinances and regulations. The Developer shall submit all necessary documents to the City's Building Department, Department of Transportation and such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for the Project.

3.03 Project Budget. The Developer has furnished to DPD, and DPD has approved, a Project Budget showing total costs for the Project in the approximate amount of not less than \$53,753,405. The Developer hereby certifies to the City that together with the City Funds (a) it has Lender Financing and Equity in an amount sufficient to pay for all Project costs; and (b) the Project Budget is true, correct and complete in all material respects. The Developer shall promptly deliver to DPD certified copies of any Change Orders with respect to the Project Budget for approval pursuant to **Section 3.04** hereof.

3.04 Change Orders. All Change Orders (and documentation substantiating the need and identifying the source of funding therefor) relating to changes to the Project must be submitted by the Developer to DPD. The Developer shall not authorize or permit the performance of any work relating to any Change Order or the furnishing of materials in connection therewith prior to the receipt by the Developer of DPD's written approval, which shall not be unreasonably withheld, conditioned or delayed. The Construction Contract, and each contract between the General Contractor and any subcontractor, shall contain a provision to this effect. An approved Change Order shall not be deemed to imply any obligation on the part of the City to increase the amount of City Funds which the City has pledged pursuant to this Agreement or provide any other additional assistance to the Developer.

3.05 DPD Approval. Any approval granted by DPD of the Scope Drawings, Plans and Specifications and the Change Orders is for the purposes of this Agreement only and does not affect or constitute any approval required by any other City department or pursuant to any City ordinance, code, regulation or any other governmental approval, nor does any approval by DPD pursuant to this Agreement constitute approval of the quality, structural soundness or safety of the Property or the Project.

3.06 Other Approvals. Any DPD approval under this Agreement shall have no effect upon, nor shall it operate as a waiver of, the Developer's obligations to comply with the

provisions of **Section 5.03** (Other Governmental Approvals) hereof. The Developer shall not commence construction of the Project until the Developer has obtained all necessary permits and approvals (including but not limited to DPD's approval of the Scope Drawings and Plans and Specifications) and proof of the General Contractor's and each subcontractor's bonding as required hereunder.

3.07 Progress Reports and Survey Updates. The Developer shall provide DPD with written quarterly progress reports detailing the status of the Project, including a revised completion date, if necessary (with any change in completion date being considered a Change Order, requiring DPD's written approval pursuant to **Section 3.04**). The Developer shall provide three (3) copies of an updated Survey to DPD upon the request of DPD or any lender providing Lender Financing, reflecting improvements made to the Property.

3.08 Inspecting Agent or Architect. An inspecting agent or architect which may be the lender's (providing Lender Financing) architect or agent shall perform periodic inspections with respect to the Project, providing certifications with respect thereto to DPD, prior to requests for disbursement for costs related to the Project hereunder.

3.09 Barricades. Prior to commencing any construction requiring barricades, the Developer shall install a construction barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable federal, state or City laws, ordinances and regulations. DPD retains the right to approve the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades.

3.10 Signs and Public Relations. The Developer shall erect a sign of size and style approved by the City in a conspicuous location on the Property during the Project, indicating that financing has been provided by the City. The City reserves the right to include the name, photograph, artistic rendering of the Project and other pertinent information regarding the Developer Parties, the Property and the Project in the City's promotional literature and communications.

3.11 Utility Connections. The Developer may connect all on-site water, sanitary, storm and sewer lines constructed on the Property to City utility lines existing on or near the perimeter of the Property, provided the Developer first complies with all City requirements governing such connections, including the payment of customary fees and costs related thereto.

3.12 Permit Fees. In connection with the Project, the Developer shall be obligated to pay only those building, permit, engineering, tap on and inspection fees that are assessed on a uniform basis throughout the City of Chicago and are of general applicability to other property within the City of Chicago.

3.13 Environmental Features. The Project will be LEED certified and will conform to the energy efficiency requirements of the Planned Unit Development approved by the City for the Project and as listed on **Exhibit F** hereto.

SECTION 4. FINANCING

4.01 Total Project Cost and Sources of Funds. The cost of the Project is estimated to be \$53,753,405, to be applied in the manner stated in the Project Budget and funded from sources identified on **Exhibit H**.

4.02 Developer Funds. Equity, the City Funds and Lender Financing will be used to pay all Project costs, including but not limited to costs of TIF-Funded Improvements.

4.03 City Funds.

(a) Uses of City Funds.

City Funds may only be used to pay directly or reimburse TCB and/or the Developer for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. **Exhibit C** sets forth, by line item, the TIF-Funded Improvements for the Project, and the maximum amount of costs that may be paid by or reimbursed from City Funds for each line item therein (subject to **Sections 4.03(b)**), contingent upon receipt by the City of documentation satisfactory in form and substance to DPD evidencing such cost and its eligibility as a Redevelopment Project Cost. TCB and/or Southbridge 1-4 shall be required to loan or contribute any City Funds paid to TCB and/or Southbridge 1-4 to the Developer to reimburse the Developer for the costs of TIF-Funded Improvements or directly pay for the costs of the TIF-Funded Improvements.

(b) Sources of City Funds. Subject to the terms and conditions of this Agreement, including but not limited to this **Section 4.03** and **Section 5** hereof, the City hereby agrees to provide City funds (the "City Funds") from the sources and in the amounts described directly below to pay for or reimburse any of the Developer Parties for the costs of the TIF-Funded Improvements:

<u>Source of City Funds</u>	<u>Maximum Amount</u>
Available Incremental Taxes and/or TIF Bond proceeds	\$12,750,000

provided, however, that the total amount of City Funds expended for TIF-Funded Improvements shall be an amount not to exceed the lesser of \$12,750,000 or 23.71% of the actual total Project costs; and provided further, that the \$12,750,000 to be derived from Available Incremental Taxes and/or TIF Bond proceeds, if any, shall be available to pay costs related to TIF-Funded Improvements and allocated by the City for that purpose only so long as the amount of the Available Incremental Taxes deposited into the TIF Fund shall be sufficient to pay for such costs. The City Funds shall be disbursed in four (4) installments as follows:

i) The first installment of City Funds in the amount of \$3,187,500 shall be paid upon twenty-five percent (25%) of construction completion;

ii) The second installment of City Funds in the amount of \$3,187,500 shall be paid upon fifty percent (50%) of construction completion;

iii) The third installment of City Funds in the amount of \$3,187,500 shall be paid upon seventy-five percent (75%) of construction completion; and

iv) The fourth installment of City Funds in the amount of \$3,187,500 shall be paid upon the issuance of the Certificate.

The Developer Parties acknowledge and agree that the City's obligation to pay for TIF-Funded Improvements up to a maximum of \$12,750,000 is contingent upon the fulfillment of the foregoing conditions. If such conditions are not fulfilled, the amount of Equity to be contributed by the Developer Parties pursuant to **Section 4.01** hereof shall increase proportionately.

4.04 Construction Escrow; Requisition Form. DPD must approve disbursements of the City Funds from the Escrow. The Developer shall submit a Requisition Form prior to each disbursement of City Funds. The Developer shall meet with DPD at the request of DPD to discuss the Requisition Form(s) previously delivered.

4.05 Treatment of Prior Expenditures and Subsequent Disbursements.

(a) **Prior Expenditures.** Only those expenditures made by any of the Developer Parties with respect to the Project prior to the Closing Date, evidenced by documentation satisfactory to DPD and approved by DPD as satisfying costs covered in the Project Budget, shall be considered previously contributed Equity or Lender Financing hereunder (the "**Prior Expenditures**"). **Exhibit I** hereto sets forth the prior expenditures approved by DPD as of the date hereof as Prior Expenditures. Prior Expenditures made for items other than TIF-Funded Improvements shall not be reimbursed to any of the Developer Parties by the City with City Funds but may be eligible for reimbursement through the Lender Financing or Equity identified in **Section 4.01** hereof.

(b) **Allocation Among Line Items.** Disbursements for expenditures related to TIF-Funded Improvements may be allocated to and charged against the appropriate line only, with transfers of costs and expenses from one line item to another, without the prior written consent of DPD, being prohibited; provided, however, that such transfers among line items, in an amount not to exceed \$50,000 or \$100,000 in the aggregate, may be made without the prior written consent of DPD.

4.06 Cost Overruns. If the aggregate cost of the TIF-Funded Improvements exceeds City Funds available pursuant to **Section 4.03** hereof, or if the cost of completing the Project exceeds the Project Budget, the Developer shall be solely responsible for such excess cost and shall hold the City harmless from any and all costs and expenses of completing the TIF-Funded Improvements in excess of City Funds and of completing the Project.

4.07 Preconditions of Disbursement. Prior to each disbursement of City Funds hereunder, one or more of the Developer Parties shall submit documentation regarding the applicable expenditures to DPD which shall be satisfactory to DPD in its sole discretion. Delivery by one or more of the Developer Parties to DPD of any request for disbursement of City Funds hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for disbursement, that:

(a) the total amount of the Requisition Form represents the actual cost of the actual amount payable to (or paid to) the contractors who have performed work on the Project, and/or their payees, and/or (ii) the architect for the inspections performed in monitoring the construction of the Project;

(b) all amounts shown as previous payments on the current Requisition Form have been paid to the parties entitled to such payment;

(c) the Developer has approved all work and materials for the current Requisition Form, and such work and materials conform to the Plans and Specifications;

(d) the representations and warranties contained in this Redevelopment Agreement are true and correct and the Developer Parties are in compliance with all covenants contained herein;

(e) none of the Developer Parties have received notice and have no knowledge of any liens or claim of lien either filed or threatened against the Property except for the Permitted Liens;

(f) no Event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default exists or has occurred; and

(g) the Project is In Balance. The Project shall be deemed to be in balance (“**In Balance**”) only if the total of the Available Project Funds (as defined hereinafter) equals or exceeds the aggregate of the amount necessary to pay all unpaid Project costs incurred or to be incurred in the completion of the Project. “**Available Project Funds**” as used herein shall mean: (i) the undisbursed City Funds; (ii) the undisbursed Lender Financing, if any; (iii) the undisbursed Equity and (iv) any other amounts deposited by any of the Developer Parties pursuant to this Agreement. The Developer hereby agrees that, if the Project is not In Balance, the Developer shall, within 10 days after a written request by the City, deposit with the escrow agent or will make available (in a manner acceptable to the City), cash in an amount that will place the Project In Balance, which deposit shall first be exhausted before any further disbursement of the City Funds shall be made.

The City shall have the right, in its discretion, to require the Developer Parties to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any disbursement by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by the Developer Parties. In addition, the Developer Parties shall have satisfied all other preconditions of disbursement of City Funds for each disbursement, including but not limited to requirements set forth in the TIF Bond Ordinance, if any, the TIF Bonds, if any, the TIF Ordinances, this Agreement and/or the Escrow Agreement.

Notwithstanding any other provision in this Agreement, the City shall not terminate this Agreement or suspend disbursement of the City Funds upon the occurrence of an Event of Default unless foreclosure proceedings have been commenced under any mortgage securing any Lender Financing or a deed in lieu of such foreclosure has been executed and delivered and provided that no lender providing Lender Financing has cured the Event of Default within the curative time period provided under **Section 15.03**.

4.08 Sale or Transfer of the Property or Project by Developer.

(a) Prior to the Date of Issuance of the Certificate. Developer must obtain the prior approval of the City for any sale or transfer of any part of the Property or the Project prior to the issuance of the Certificate. Such approval by the City will be subject to the reasonable discretion requirement stated in **Section 18.14**.

(b) After the Date of Issuance of the Certificate. After the date of the Certificate, Developer need not obtain prior approval for any sale or transfer of any part of the Property or the Project. Developer must, however, notify the City not less than 60 days before any closing of such sale of Developer's intention to sell any part of the Property or the Project. Developer must provide the City with true and correct copies of any contract for sale and related documents as part of such notice.

(c) Permitted Transfers. Notwithstanding anything herein to the contrary, City will permit (i) Southbridge 1-4's investor member to transfer its investor member interest to any person at any time and, (ii) City will permit investor member to remove the managing member of Southbridge 1-4, in accordance with Southbridge 1-4's operating agreement, provided the substitute managing member is acceptable to City in its reasonable discretion, and (iii) Southbridge 1-4's managing member to pledge to Senior Lender all of managing member's rights, title and interest in and to Southbridge 1-4 and under Southbridge 1-4's operating agreement as collateral for Southbridge 1-4's obligations under the loans made or to be made by Senior Lender to Developer or Southbridge 1-4.

4.09 Conditional Grant. The City Funds being provided hereunder are being granted on a conditional basis, subject to the Developer Parties' compliance with the provisions of this Agreement. The City Funds disbursed are subject to being reimbursed upon the Developer Parties' noncompliance with the provisions of this Agreement.

SECTION 5. CONDITIONS PRECEDENT

The following conditions have been complied with to the City's satisfaction on or prior to the Closing Date:

5.01 Project Budget. The Developer has submitted to DPD, and DPD has approved, a Project Budget in accordance with the provisions of Section 3.03 hereof.

5.02 Scope Drawings and Plans and Specifications. The Developer has submitted to DPD, and DPD has approved, the Scope Drawings and Plans and Specifications in accordance with the provisions of Section 3.02 hereof.

5.03 Other Governmental Approvals. The Developer has secured all other necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation and has submitted evidence thereof to DPD.

5.04 Financing. The Developer has furnished proof reasonably acceptable to the City that the Developer has Equity and Lender Financing in the amounts set forth in Section 4.01 hereof to complete the Project and satisfy its obligations under this Agreement. If a portion of such funds consists of Lender Financing, the Developer has furnished proof as of the Closing Date that the proceeds thereof are available to be drawn upon by the Developer as needed and are sufficient (along with the Equity and other sources set forth in Exhibit H) to complete the Project. Any liens against the Property in existence at the Closing Date have been subordinated to certain encumbrances of the City set forth herein pursuant to a subordination agreement, in a form acceptable to the City, executed on or prior to the Closing Date, which is

to be recorded, at the expense of the Developer, with the Office of the Recorder of Deeds of Cook County.

5.05 Acquisition and Title. On the Closing Date, the Developer has furnished the City with a copy of the Title Policy for the Property, certified by the Title Company, showing the Developer as the named insured. The Title Policy is dated as of the Closing Date and contains only those title exceptions listed as Permitted Liens on **Exhibit G** hereto and evidences the recording of this Agreement pursuant to the provisions of **Section 8.18** hereof. The Title Policy also contains such endorsements as shall be required by Corporation Counsel, including, but not limited to: an owner's comprehensive endorsement and satisfactory endorsements regarding zoning (3.1 with parking), contiguity, location, access and survey. The Developer has provided to DPD on or prior to the Closing Date certified copies of all easements and encumbrances of record with respect to the Property not addressed, to DPD's satisfaction, by the Title Policy and any endorsements thereto.

5.06 Evidence of Clean Title. The Developer, at its own expense, has provided the City with searches as follows:

Secretary of State	UCC search
Secretary of State	Federal tax search
Cook County Recorder	UCC search
Cook County Recorder	Fixtures search
Cook County Recorder	Federal tax search
Cook County Recorder	State tax search
Cook County Recorder	Memoranda of judgments search
U.S. District Court	Pending suits and judgments
Clerk of Circuit Court, Cook County	Pending suits and judgments

showing no liens against the Developer, TCB, Southbridge 1-4, the Property or any fixtures now or hereafter affixed thereto, except for the Permitted Liens.

5.07 Surveys. The Developer has furnished the City with three (3) copies of the Survey.

5.08 Insurance. The Developer, at its own expense, has insured the Property in accordance with **Section 12** hereof, and has delivered certificates required pursuant to **Section 12** hereof evidencing the required coverages to DPD.

5.09 Opinion of the Developer Parties' Counsel. On the Closing Date, the Developer Parties have furnished the City with an opinion of counsel, substantially in the form attached hereto as **Exhibit J**, with such changes as required by or acceptable to Corporation Counsel. If any of the Developer Parties have engaged special counsel in connection with the Project, and such special counsel is unwilling or unable to give some of the opinions set forth in **Exhibit J** hereto, such opinions were obtained by the Developer Parties from their general corporate counsel.

5.10 Evidence of Prior Expenditures. One or more of the Developer Parties have provided evidence satisfactory to DPD in its sole discretion of the Prior Expenditures in accordance with the provisions of **Section 4.05(a)** hereof.

5.11 Financial Statements. The Developer Parties shall provide Financial Statements to DPD for their most recent fiscal year and audited or unaudited interim financial statements.

5.12 Documentation. The Developer Parties have provided documentation to DPD, satisfactory in form and substance to DPD, with respect to current employment matters including the reports described in **Section 8.06**.

5.13 Environmental. The Developer has provided DPD with copies of that certain phase I environmental audit completed with respect to the Property and any phase II environmental audit with respect to the Property required by the City. The Developer has provided the City with a letter from the environmental engineer(s) who completed such audit(s), authorizing the City to rely on such audits.

5.14 Corporate Documents; Economic Disclosure Statement. The Developer and Southbridge 1-4 have each provided a copy of its certificate of organization containing the original certification of the Secretary of State of Illinois; each of Southbridge 1-4's and the Developer's certificate of existence from the Secretary of State of Illinois; a certified copy of each of Southbridge 1-4's and the Developer's operating agreement; an incumbency certificate for each the Developer and Southbridge 1-4; certificate of good standing for TCB of the Secretary of State; copies of the TCB's articles of organization containing the original certification of the Secretary of State, member's certificate for TCB. The Developer, TCB and Southbridge 1-4 have each provided to the City an Economic Disclosure Statement, in the City's then current form, dated as of the Closing Date.

5.15 Litigation. The Developer Parties have provided to Corporation Counsel and DPD, a description of all pending or threatened litigation or administrative proceedings involving the Developer Parties, specifying, in each case, the amount of each claim, an estimate of probable liability, the amount of any reserves taken in connection therewith and whether (and to what extent) such potential liability is covered by insurance.

SECTION 6. AGREEMENTS WITH CONTRACTORS

6.01 Bid Requirement for Contractors. Prior to entering into an agreement with any contractor for construction of the Project, the Developer Parties shall solicit bids from one or more qualified contractors eligible to do business with the City of Chicago and shall submit all bids received to DPD for its inspection and written approval. For the TIF-Funded Improvements, the Developer Parties shall select the contractor submitting the lowest responsible bid who can complete the Project in a timely manner. If the Developer Parties selects any contractor submitting other than the lowest responsible bid for the TIF-Funded Improvements, the difference between the lowest responsible bid and the bid selected may not be paid out of City Funds. The Developer Parties shall submit copies of the Construction Contract to DPD in accordance with **Section 6.02** below. Photocopies of all subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DPD within five (5) business days of the execution thereof. The Developer Parties shall ensure that no contractors shall begin work on the Project until the Plans and Specifications have been approved by DPD and all requisite permits have been obtained.

6.02 Construction Contract. Prior to the execution thereof, the Developer Parties shall deliver to DPD a copy of the proposed Construction Contract with the General Contractor

selected to handle the Project in accordance with **Section 6.01** above, for DPD's prior written approval, which shall be granted or denied within ten (10) business days after delivery thereof,

6.03 Performance and Payment Bonds. Prior to the commencement of any portion of the Project which includes work on the public way, the Developer Parties shall require that the General Contractor be bonded for its payment by sureties having an AA rating or better.

6.04 Employment Opportunity. The Developer Parties shall contractually obligate and cause the General Contractor, and the General Contractor shall cause each of its subcontractors, to agree to the provisions of **Section 10** hereof.

6.05 Other Provisions. In addition to the requirements of this **Section 6**, the Construction Contract and each contract with any subcontractor shall contain provisions required pursuant to **Section 3.04** (Change Orders), **Section 8.08** (Prevailing Wage), **Section 10.01(e)** (Employment Opportunity), **Section 10.02** (City Resident Employment Requirement), **Section 10.03** (MBE/WBE Requirements, as applicable), **Section 12** (Insurance) and **Section 14.01** (Books and Records) hereof. Photocopies of all contracts or subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DPD within five (5) business days of the execution thereof

SECTION 7. COMPLETION OF CONSTRUCTION

7.01 Certificate of Completion of Construction. Upon completion of the construction of the Project in accordance with the terms of this Agreement, and upon the Developer Parties' written request, DPD shall issue to the Developer Parties a Certificate, in recordable form certifying that the Developer Parties have fulfilled their obligation to complete the Project in accordance with the terms of this Agreement. DPD shall respond to the Developer Parties' written request for a Certificate within forty-five (45) days by issuing either a Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed, and the measures which must be taken by the Developer Parties in order to obtain the Certificate. The Developer Parties may resubmit a written request for a Certificate upon completion of such measures. DPD shall not issue a Certificate until all of the following conditions are met by the Developer:

- i. receipt of a Certificate of Occupancy or other evidence acceptable to DPD that the Developer has complied with building permit requirements for the Project; 100% of the Project has been constructed and the architect of record has issued a certificate of substantial completion; for the commercial/retail space, the core and shell has been completed without tenant improvements;
- ii. Evidence that Developer has incurred TIF-eligible costs, in an equal amount to, or greater than, \$12,750,000;
- iii. The City's monitoring and compliance unit has verified that, at the time the Certificate is issued, the Developer is in full compliance with City requirements set forth in Section 10 and Section 8.06 (M/WBE, City Residency and Prevailing Wage) with respect to construction of the Project, and that 100% of the Developer's MBE/WBE Commitment in Section 10.03 has been fulfilled;

- iv. The Developer has provided (1) evidence of installation of the environmental features contained in the Planned Unit Development approved by the City for the Project and as listed on Exhibit F, and (2) an affidavit from its architect certifying that the Facility would likely achieve the minimum points required for LEED Certification; and
- v. There exists neither an Event of Default (after any applicable cure period) which is continuing nor a condition nor event which, with the giving of notice or passage of time or both, would constitute an Event of Default.

7.02 Effect of Issuance of Certificate; Continuing Obligations. The Certificate relates only to the construction of the Project, and upon its issuance, the City will certify that the terms of the Agreement specifically related to the Developer Parties' obligation to complete such activities have been satisfied. After the issuance of a Certificate, however, all executory terms and conditions of this Agreement and all representations and covenants contained herein will continue to remain in full force and effect throughout the Term of the Agreement as to the parties described in the following paragraph, and the issuance of the Certificate shall not be construed as a waiver by the City of any of its rights and remedies pursuant to such executory terms.

Those covenants specifically described at **Sections 8.02, 8.06, 8.18 and 8.19** as covenants that run with the land are the only covenants in this Agreement intended to be binding upon any transferee of the Property (including an assignee as described in the following sentence) throughout the Term of the Agreement notwithstanding the issuance of a Certificate; provided, that upon the issuance of a Certificate, the covenants set forth in **Section 8.02** shall be deemed to have been fulfilled. The other executory terms of this Agreement that remain after the issuance of a Certificate shall be binding only upon the Developer Parties or a permitted assignee of the Developer Parties who, pursuant to **Section 18.15** of this Agreement, has contracted to take an assignment of the Developer Parties' rights under this Agreement and assume the Developer Parties' liabilities hereunder.

7.03 Failure to Complete. If the Developer Parties fail to complete the Project in accordance with the terms of this Agreement, then the City has, but shall not be limited to, any of the following rights and remedies:

(a) the right to terminate this Agreement and cease all disbursement of City Funds not yet disbursed pursuant hereto;

(b) the right (but not the obligation) to complete those TIF-Funded Improvements that are public improvements and to pay for the costs of TIF-Funded Improvements (including interest costs) out of City Funds or other City monies. In the event that the aggregate cost of completing the TIF-Funded Improvements exceeds the amount of City Funds available pursuant to **Section 4.01**, the Developer Parties shall reimburse the City for all reasonable costs and expenses incurred by the City in completing such TIF-Funded Improvements in excess of the available City Funds; and

(c) the right to seek reimbursement of the City Funds from the Developer Parties.

7.04 Notice of Expiration of Term of Agreement. Upon the expiration of the Term of the Agreement, DPD shall provide the Developer Parties at the Developer Parties' written

request, with a written notice in recordable form stating that the Term of the Agreement has expired.

SECTION 8. COVENANTS/REPRESENTATIONS/WARRANTIES OF THE DEVELOPER PARTIES.

8.01 General. The Developer Parties represent, warrant and covenant, as of the date of this Agreement and as of the date of each disbursement of City Funds hereunder, that (each of the Developer Parties makes the following representations, warranties, and covenants only with respect to itself and not the other Developer Parties):

(a) the Developer is an Illinois limited liability company duly organized, validly existing, qualified to do business in Illinois, and licensed to do business in any other state where, due to the nature of its activities or properties, such qualification or license is required, TCB is an Illinois limited liability company, duly organized, validly existing, qualified to do business in Illinois, and licensed to do business any other state where, due to the nature of its activities or properties, such qualification or license is required, and Southbridge 1-4 is an Illinois limited liability company duly organized, validly existing, qualified to do business in Illinois, and licensed to do business in any other state where, due to the nature of its activities or properties, such qualification or license is required;

(b) the Developer Parties have the right, power and authority to enter into, execute, deliver and perform this Agreement;

(c) the execution, delivery and performance by the Developer Parties of this Agreement has been duly authorized by all necessary corporate action, as applicable, and does not and will not violate its organizational documents, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which the any one of the Developer Parties is now a party or by which any one of the Developer Parties is now or may become bound;

(d) Developer shall acquire and shall maintain a good, indefeasible and merchantable leasehold interest in the Property (and a fee interest in all improvements thereon) free and clear of all liens (except for the Permitted Liens, Lender Financing as disclosed in the Project Budget and non-governmental charges that the Developer is contesting in good faith pursuant to **Section 8.18** hereof);

(e) the Developer Parties are now and for the Term of the Agreement shall remain solvent and able to pay their debts as they mature;

(f) there are no actions or proceedings, by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the Developer Parties which would impair their ability to perform under this Agreement;

(g) the Developer Parties have and shall maintain all government permits, certificates and consents (including, without limitation, appropriate environmental approvals) necessary to conduct their business and to construct, complete and operate the Project;

(h) the Developer Parties are not in default with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument related to the borrowing

of money to which any one of the Developer Parties is a party or by which any one of the Developer Parties is bound;

(i) the Financial Statements, when hereafter required to be submitted, will be, complete, correct in all material respects and accurately present the assets, liabilities, results of operations and financial condition of the Developer Parties, and there has been no material adverse change in the assets, liabilities, results of operations or financial condition of any one of the Developer Parties since the date of such Developer Parties most recent Financial Statements;

(j) prior to the issuance of a Certificate, the Developer Parties shall not do any of the following without the prior written consent of DPD: (1) be a party to any merger, liquidation or consolidation; (2) sell, transfer, convey, lease or otherwise dispose of all or substantially all of its assets or any portion of the Property (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business or pursuant to the terms of the Ground Lease; (3) enter into any transaction outside the ordinary course of the Developer Parties' business; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity (other than in connection with the financing for the Project); or (5) enter into any transaction that would cause a material and detrimental change to the Developer Parties' financial condition;

(k) the Developer has not incurred, and, prior to the issuance of a Certificate, shall not, without the prior written consent of the Commissioner of DPD, allow the existence of any liens against the Property (or improvements thereon) other than the Permitted Liens; or incur any indebtedness, secured or to be secured by the Property (or improvements thereon) or any fixtures now or hereafter attached thereto, except Lender Financing disclosed in the Project Budget; and

(l) Developer Parties have not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the Agreement or any contract paid from the City treasury or pursuant to City ordinance, for services to any City agency ("**City Contract**") as an inducement for the City to enter into the Agreement or any City Contract with any one of the Developer Parties in violation of Chapter 2-156-120 of the Municipal Code of the City; and

(m) none of the Developer Parties nor any Affiliate of the Developer Parties is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this subparagraph (m) only, the term "affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

8.02 Covenant to Redevelop. Upon DPD's approval of the Project Budget, the Scope Drawings and Plans and Specifications as provided in **Sections 3.02** and **3.03** hereof, and the Developer's receipt of all required building permits and governmental approvals, the Developer Parties shall redevelop the Property in accordance with this Agreement and all Exhibits attached hereto, the TIF Ordinances, the Scope Drawings, Plans and Specifications, Project Budget and all amendments thereto, and all federal, state and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project, the Property and/or the Developer Parties. The covenants set forth in this Section shall run with the land and be binding upon any transferee but shall be deemed satisfied upon issuance by the City of a Certificate with respect thereto.

8.03 Redevelopment Plan. The Developer Parties represent that the Project is and shall follow all of the terms of the Redevelopment Plan.

8.04 Use of City Funds. City Funds disbursed to any of the Developer Parties shall be used by the Developer Parties solely to pay for (or to reimburse the Developer Parties for their payment for) the TIF-Funded Improvements as provided in this Agreement. If the City pays any of the City Funds to TCB and/or Southbridge 1-4, TCB and/or Southbridge 1-4 shall be required to loan or contribute the City Funds to the Developer, to reimburse the Developer for the costs of TIF-Funded Improvements or directly pay for the costs of the TIF-Funded Improvements.

8.05 TIF Bonds. The Developer Parties shall, at the request of the City, agree to any reasonable amendments to this Agreement that are necessary or desirable in order for the City to issue (in its sole discretion) TIF Bonds in connection with the Redevelopment Area, the proceeds of which may be used to reimburse the City for expenditures made in connection with, or provide a source of funds for the payment for, the TIF-Funded Improvements; provided, however, that any such amendments shall not have a material adverse effect on the Developer Parties or the Project; provided, further, that the proceeds of TIF Bonds issued on a tax-exempt basis cannot be used as a source of City Funds or to repay the City Funds. The Developer Parties shall, at the Developer Parties' expense, cooperate and provide reasonable assistance in connection with the marketing of any such TIF Bonds, including but not limited to providing written descriptions of the Project, making representations, providing information regarding its financial condition and assisting the City in preparing an offering statement with respect thereto.

8.06 Employment Opportunity; Progress Reports. The Developer Parties covenant and agree to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor (and the General Contractor shall, in turn, use reasonable efforts to cause its subcontractors) to abide by the terms set forth in **Section 10** hereof. The Developer shall deliver to the City written progress reports detailing compliance with the requirements of **Sections 8.08, 10.02 and 10.03** of this Agreement. Such reports shall be delivered to the City when the Project is 25%, 50%, 75% and 100% completed (based on the amount of expenditures incurred in relation to the Project Budget). If any such reports indicate a shortfall in compliance, the Developer shall also deliver a plan to DPD which shall outline, to DPD's satisfaction, the manner in which the Developer shall correct any shortfall.

8.07 Employment Profile. The Developer Parties shall submit, and contractually obligate and cause the General Contractor (and the General Contractor shall, in turn, use reasonable efforts to cause its subcontractors) to submit, to DPD, from time to time, statements of its employment profile upon DPD's request.

8.08 Prevailing Wage. On account of the CHA Loan which is part of the Lender Financing, the Project is subject to the requirements of the Davis-Bacon Act, 40 U.S.C. Section 276a et seq. Accordingly, pursuant to 820 ILCS 130/11 of the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.), the requirements of the Illinois Prevailing Wage Act shall not apply to the Project.

8.09 Arms-Length Transactions. Unless DPD has given its prior written consent with respect thereto, no Affiliate of the Developer Parties may receive any portion of City Funds, directly or indirectly, in payment for work done, services provided, or materials supplied in connection with any TIF-Funded Improvement. The Developer Parties shall provide information with respect to any entity to receive City Funds directly or indirectly (whether through payment to the Affiliate by the Developer Parties and reimbursement to the Developer Parties for such costs using City Funds, or otherwise), upon DPD's request, prior to any such disbursement.

8.10 Conflict of Interest. Pursuant to Section 5/11-74.4-4(n) of the Act, the Developer Parties represent, warrant and covenant that, to the best of their knowledge, no member, official, or employee of the City, or of any commission or committee exercising authority over the Project, the Redevelopment Area or the Redevelopment Plan, or any consultant hired by the City or the Developer Parties with respect thereto, owns or controls, has owned or controlled or will own or control any interest, and no such person shall represent any person, as agent or otherwise, who owns or controls, has owned or controlled, or will own or control any interest, direct or indirect, in the Developer Parties' business, the Property or any other property in the Redevelopment Area.

8.11 Disclosure of Interest. The Developer Parties' counsel has no direct or indirect financial ownership interest in the Developer Parties, the Property or any other aspect of the Project.

8.12 Financial Statements. The Developer Parties shall obtain and provide to DPD Financial Statements for the most current fiscal year ended December 31st and each December 31st thereafter for the Term of the Agreement. In addition, the Developer Parties shall submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as DPD may request.

8.13 Insurance. The Developer, at its own expense, shall comply with all provisions of **Section 12** hereof.

8.14 Non-Governmental Charges.

(a) **Payment of Non-Governmental Charges.** Except for the Permitted Liens, the Developer agrees to pay or cause to be paid when due any Non-Governmental Charge assessed or imposed upon the Project, the Property or any fixtures that are or may become attached thereto, which creates, may create, or appears to create a lien upon all or any portion of the Property or Project; provided however, that if such Non-Governmental Charge may be paid in installments, the Developer may pay the same together with any accrued interest thereon in installments as they become due and before any fine, penalty, interest, or cost may be added thereto for nonpayment. The Developer shall furnish to DPD, within thirty (30) days of DPD's request, official receipts from the appropriate entity, or other proof satisfactory to DPD, evidencing payment of the Non-Governmental Charge in question.

(b) Right to Contest. The Developer has the right, before any delinquency occurs:

(i) to contest or object in good faith to the amount or validity of any Non-Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charge, prevent the imposition of a lien or remove such lien, or prevent the sale or forfeiture of the Property (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend the Developer's covenants to pay any such Non-Governmental Charge at the time and in the manner provided in this Section 8.14); or

(ii) at DPD's sole option, to furnish a good and sufficient bond or other security satisfactory to DPD in such form and amounts as DPD shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Property or any portion thereof or any fixtures that are or may be attached thereto, during the pendency of such contest, adequate to pay fully any such contested Non-Governmental Charge and all interest and penalties upon the adverse determination of such contest.

8.15 Developer Parties' Liabilities. The Developer Parties shall not enter into any transaction that would materially and adversely affect their ability to perform their obligations hereunder or to repay any material liabilities or perform any material obligations of the Developer Parties to any other person or entity. The Developer Parties shall immediately notify DPD of all events or actions which may materially affect the Developer Parties' ability to carry on its business operations or perform its obligations under this Agreement or any other documents and agreements.

8.16 Compliance with Laws. To the best of the Developer Parties' knowledge, after diligent inquiry, the Property and the Project are and shall follow all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project and the Property. Upon the City's request, the Developer Parties shall provide evidence satisfactory to the City of such compliance.

8.17 Recording and Filing. The Developer shall cause this Agreement, certain exhibits (as specified by Corporation Counsel), all amendments and supplements hereto to be recorded and filed against the Property on the date hereof in the conveyance and real property records of Cook County, Illinois. The Developer shall pay all fees and charges incurred in connection with any such recording. Upon recording, the Developer shall immediately transmit to the City an executed original of this Agreement showing the date and recording number of record.

8.18 Real Estate Provisions.

(a) Governmental Charges.

(i) Payment of Governmental Charges. The Developer agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon the Developer, the Property or the Project, or become due and payable, and which create, may create, or appear to create a lien upon the Developer or all or any portion of the Property or the Project. A "Governmental Charge" shall mean all federal, State, county, the City, or other governmental (or any instrumentality, division, agency,

body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances (except for those assessed by foreign nations, states other than the State of Illinois, counties of the State other than Cook County, and municipalities other than the City) relating to the Developer, the Property or the Project including but not limited to real estate taxes.

(ii) Right to Contest. The Developer has the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted in such manner as shall stay the collection of the contested Governmental Charge and prevent the imposition of a lien or the sale or forfeiture of the Property. The Developer's right to challenge real estate taxes applicable to the Property is limited as provided for in **Section 8.18(c)** below; provided, that such real estate taxes must be paid in full when due and may be disputed only after such payment is made. No such contest or objection shall be deemed or construed in any way as relieving, modifying or extending the Developer's covenants to pay any such Governmental Charge at the time and in the manner provided in this Agreement unless the Developer has given prior written notice to DPD of the Developer's intent to contest or object to a Governmental Charge and, unless, at DPD's sole option,

(iii) the Developer shall demonstrate to DPD's satisfaction that legal proceedings instituted by the Developer contesting or objecting to a Governmental Charge shall conclusively operate to prevent or remove a lien against, or the sale or forfeiture of, all or any part of the Property to satisfy such Governmental Charge prior to final determination of such proceedings; and/or

(iv) the Developer shall furnish a good and sufficient bond or other security satisfactory to DPD in such form and amounts as DPD shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Property during the pendency of such contest, adequate to pay fully any such contested Governmental Charge and all interest and penalties upon the adverse determination of such contest.

(b) Developer's Failure To Pay Or Discharge Lien. If the Developer fails to pay any Governmental Charge or to obtain discharge of the same, the Developer shall advise DPD thereof in writing, at which time DPD may, but shall not be obligated to, and without waiving or releasing any obligation or liability of the Developer under this Agreement, in DPD's sole discretion, make such payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which DPD deems advisable. All sums so paid by DPD, if any, and any expenses, if any, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be promptly disbursed to DPD by the Developer. Notwithstanding anything contained herein to the contrary, this paragraph shall not be construed to obligate the City to pay any such Governmental Charge. Additionally, if the Developer fails to pay any Governmental Charge, the City, in its sole discretion, may require the Developer to submit to the City audited Financial Statements at the Developer's own expense.

(c) Real Estate Taxes.

(i) Real Estate Tax Exemption. With respect to the Property or the Project, neither the Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to the Developer shall, during the Term of this Agreement, seek, or authorize any exemption (as such term is used and defined in the Illinois Constitution, Article IX, Section 6 (1970)) for any year that the Redevelopment Plan is in effect, except any exemption for which DPD has provided its prior written consent.

(ii) Covenants Running with the Land. The parties agree that the restrictions contained in this Section 8.18(c) are covenants running with the land and this Agreement shall be recorded by the Developer as a memorandum thereof, at the Developer's expense, with the Cook County Recorder of Deeds on the Closing Date. These restrictions shall be binding upon the Developer Parties and their agents, representatives, lessees, successors, assigns and transferees from and after the date hereof, provided however, that the covenants shall be released when the Redevelopment Area is no longer in effect. The Developer agrees that any sale, lease, conveyance, or transfer of title to all or any portion of the Property or Redevelopment Area from and after the date hereof shall be made explicitly subject to such covenants and restrictions. Notwithstanding anything contained in this Section 8.18(c) to the contrary, the City, in its sole discretion and by its sole action, without the joinder or concurrence of the Developer Parties, their successors or assigns, may waive and terminate the Developer Parties' covenants and agreements set forth in this Section 8.18(c).

8.19 Affordable Housing Covenant. Developer Parties agree and covenant to the City that, prior to any foreclosure of the Property by a lender providing Lender Financing, the provisions of that certain Regulatory Agreement executed by Developer and DPD as of the date hereof shall govern the terms of Developer's obligation to provide affordable housing. Following foreclosure, if any, and from the date of such foreclosure through the Term of the Agreement, the following provisions shall govern the terms of the obligation to provide affordable housing under this Agreement:

- (a) The Facility shall be operated and maintained solely as residential rental housing with the exception of approximately ten thousand (10,000) square feet of commercial space, a leasing and property management office, and parking spaces;
- (b) Fifty-two (52) residential housing units in the Facility shall be leased to market rate households;
- (c) Fifty-one (51) units in the Facility have monthly rents not in excess of thirty percent (30%) of the maximum allowable income for a Low Income Family (with the applicable Family size for such units determined in accordance with the rules specified in Section 42(g)(2) of the Internal Revenue Code of 1986, as amended); provided, however, that for any unit occupied by a Family (as defined below) that no longer qualifies as a Low Income Family due to an increase in such Family's income since the date of its initial occupancy of such unit, the maximum monthly rent for such unit shall not exceed thirty percent (30%) of such Family's monthly income; and
- (d) As used in this Section 8.19, the following terms has the following meanings:

(i) "Family" shall mean one or more individuals, whether or not related by blood or marriage; and

(ii) "Low Income Families" shall mean Families whose annual income does not exceed eighty percent (80%) of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by the United States Department of Housing and Urban Development, and thereafter such income limits shall apply to this definition.

(e) The covenants set forth in this Section 8.19 shall run with the land and be binding upon any transferee.

8.20 Survival of Covenants. All warranties, representations, covenants and agreements of the Developer Parties contained in this Section 8 and elsewhere in this Agreement shall be true, accurate and complete at the time of the Developer Parties' execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and (except as provided in Section 7 hereof upon the issuance of a Certificate) shall be in effect throughout the Term of the Agreement.

8.21 Annual Compliance Report. Beginning with the issuance of the Certificate and continuing throughout the Term of the Agreement, the Developer shall submit to DPD the Annual Compliance Report within 30 days after the end of the calendar year to which the Annual Compliance Report relates.

8.22 Local Commercial Tenants. Developer will market and lease the ground floor retail shops to local, regional and national businesses. Developer agrees that it will use commercially reasonable efforts to market and lease at least 20% of available retail space to local tenants. Local tenants will be defined as those tenants that, at commercial lease execution, have the following characteristics: i) principally owned or managed by a resident of the City or whose principal office, for example corporate office is located in the City or ii) owns no more than ten (10) stores or restaurants in the City (collectively "Local Tenant"). Such requirement for Local Tenants will apply to initial lease execution or five (5) years.

8.23 Occupancy Covenant. Developer hereby covenants and agrees to maintain its operations with the City of Chicago at the site described above through the Term of the Agreement and occupancy of a minimum of 50% of the commercial space for a period of ten (10) years beginning the date that is one (1) year after the date of the issuance of the Certificate, by leasing to commercial space tenants whose operations shall not include any prohibited uses as set forth in Exhibit L hereto.

SECTION 9. COVENANTS/REPRESENTATIONS/WARRANTIES OF CITY

9.01 General Covenants. The City represents that it has the authority as a home rule unit of local government to execute and deliver this Agreement and to perform its obligations hereunder.

9.02 Survival of Covenants. All warranties, representations, and covenants of the City contained in this Section 9 or elsewhere in this Agreement shall be true, accurate, and complete at the time of the City's execution of this Agreement, and shall survive the execution,

delivery and acceptance hereof by the parties hereto and be in effect throughout the Term of the Agreement.

SECTION 10. DEVELOPER PARTIES' EMPLOYMENT OBLIGATIONS

10.01 Employment Opportunity. The Developer Parties on behalf of themselves and their successors and assigns, hereby agree, and shall contractually obligate its or their various contractors, subcontractors or any Affiliate of the Developer Parties operating on the Property (collectively, with the Developer Parties, the "**Employers**" and individually an "**Employer**") to agree, that for the Term of this Agreement with respect to Developer Parties during the period of any other party's provision of services in connection with the construction of the Project or occupation of the Property:

(a) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., Municipal Code, except as otherwise provided by said ordinance and as amended from time to time (the "**Human Rights Ordinance**"). Each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including without limitation: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, the Employers, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

(b) To the greatest extent feasible, each Employer is required to present opportunities for training and employment of low- and moderate-income residents of the City and preferably of the Redevelopment Area; and to provide that contracts for work in connection with the construction of the Project be awarded to business concerns that are located in, or owned in substantial part by persons residing in, the City and preferably in the Redevelopment Area.

(c) Each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1993), and any subsequent amendments and regulations promulgated thereto.

(d) Each Employer, in order to demonstrate compliance with the terms of this Section, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

(e) Each Employer shall include the foregoing provisions of subparagraphs (a) through (d) in every contract entered into in connection with the Project and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any Affiliate operating on the Property, so that each such provision shall be binding upon each contractor, subcontractor or Affiliate, as the case may be.

(f) Failure to comply with the employment obligations described in this **Section 10.01** shall be a basis for the City to pursue remedies under the provisions of **Section 15.02** hereof.

10.02 City Resident Construction Worker Employment Requirement. The Developer Parties agree for themselves and their successors and assigns, and shall contractually obligate their contractors and subcontractors, as applicable, to agree, that during the construction of the Project they shall comply with the minimum percentage of total worker hours performed by actual residents of the City as specified in Section 2-92-330 of the Municipal Code of Chicago (at least 50 percent of the total worker hours worked by persons on the site of the Project shall be performed by actual residents of the City); provided, however, that in addition to complying with this percentage, the Developer Parties, their contractors and each subcontractor shall be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions.

The Developer Parties may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code of Chicago in accordance with standards and procedures developed by the Chief Procurement Officer of the City.

Actual residents of the City shall mean persons domiciled within the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

The Developer Parties, the contractors and each subcontractor shall provide for the maintenance of adequate employee residency records to show that actual Chicago residents are employed on the Project. Each Employer shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) shall be submitted to the Commissioner of DPD in triplicate, which shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the Employer hired the employee should be written in after the employee's name.

The Developer Parties, the contractors and each subcontractor shall provide full access to their employment records to the Chief Procurement Officer, the Commissioner of DPD, the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. The Developer Parties, the General Contractor and each subcontractor shall maintain all relevant personnel data and records for a period of at least three (3) years after final acceptance of the work constituting the Project.

At the direction of DPD, affidavits and other supporting documentation will be required of the Developer Parties, the contractors and each subcontractor to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

Good faith efforts on the part of the Developer Parties, the contractors and each subcontractor to provide utilization of actual Chicago residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer) shall not suffice to replace the actual, verified achievement of the requirements of this Section concerning the worker hours performed by actual Chicago residents.

When work at the Project is completed, in the event that the City has determined that the Developer Parties have failed to ensure the fulfillment of the requirement of this Section concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1 percent (0.0005) of the aggregate hard construction costs set forth in the Project budget (the product of .0005 x such aggregate hard construction costs) (as the same shall be evidenced by approved contract value for the actual contracts) shall be surrendered by the Developer Parties to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject the Developer Parties, the General Contractor and/or the subcontractors to prosecution. Any retainage to cover contract performance that may become due to the Developer Parties pursuant to Section 2-92-250 of the Municipal Code of Chicago may be withheld by the City pending the Chief Procurement Officer's determination as to whether the Developer Parties must surrender damages as provided in this paragraph.

Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this Agreement or related documents.

The Developer Parties shall cause or require the provisions of this **Section 10.02** to be included in all construction contracts and subcontracts related to the Project.

10.03. MBE/WBE Commitment. Consistent with the findings which support the Minority-Owned and Women-Owned Business Enterprise Procurement Program (the "**MBE/WBE Program**"), Section 2-92-420 *et seq.*, Municipal Code of Chicago, and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this **Section 10.03**, during the course of construction of the Project, at least the following percentages of hard construction costs as set forth in the Project Budget (as set forth in **Exhibit H** hereto) shall be expended for contract participation by minority-owned businesses ("**MBEs**") and by women-owned businesses ("**WBEs**") as follows:

- a. at least 26 percent by MBEs;
- b. at least 6 percent by WBEs.

Consistent with Section 2-92-440, Municipal Code of Chicago, the Developer Parties' MBE/WBE commitment may be achieved in part by the Developer Parties' status as an MBE or

WBE (but only to the extent of any actual work performed on the Project by the Developer Parties) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by the Developer Parties utilizing a MBE or a WBE as a contractor (but only to the extent of any actual work performed on the Project by such contractor), by subcontracting a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials used in the Project from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to the Developer Parties' MBE/WBE commitment as described in this **Section 10.03**.

The Developer Parties shall deliver quarterly reports to DPD during the Project describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports shall include, inter alia, the name and business address of each MBE and WBE solicited by the Developer Parties or a contractor to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Project, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist DPD in determining the Developer Parties' compliance with this MBE/WBE commitment. The Developer Parties shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs in connection with the Project for at least five years after completion of the Project, and DPD shall have access to all such records maintained by the Developer Parties, on five Business Days' notice, to allow the City to review the Developer Parties' compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.

Upon the disqualification of any MBE or WBE contractor or subcontractor, if such status was misrepresented by the disqualified party, the Developer Parties shall be obligated to discharge or cause to be discharged the disqualified contractor or subcontractor, and, if possible, identify and engage a qualified MBE or WBE as a replacement. For purposes of this **Section 10.03**, the disqualification procedures are further described in Section 2-92-540, Municipal Code of Chicago.

Any reduction or waiver of the Developer Parties' MBE/WBE commitment as described in this **Section 10.03** shall be undertaken in accordance with Section 2-92-450, Municipal Code of Chicago.

Prior to the commencement of the Project, the Developer Parties shall be required to meet with the monitoring staff of DPD with regard to the Developer Parties' compliance with its obligations under this **Section 10.03**. All contractors and all major subcontractors shall be required to attend this pre-construction meeting. During said meeting, the Developer Parties shall demonstrate to DPD their plan to achieve their obligations under this **Section 10.03**, the sufficiency of which shall be approved by DPD. During the Project, the Developer Parties shall submit the documentation required by this **Section 10.03** to the monitoring staff of DPD. Failure to submit such documentation on a timely basis, or a determination by DPD, upon analysis of the documentation, that the Developer Parties are not complying with their obligations under this **Section 10.03**, shall, upon the delivery of written notice to the Developer Parties, be deemed an Event of Default. Upon the occurrence of any such Event of Default, in addition to any other remedies provided hereunder, the City may: (1) issue a written demand to the Developer Parties to halt the Project, (2) withhold any further payments to, or on behalf of, the Developer Parties, or (3) seek any other remedies against the Developer Parties available at law or in equity.

The Developer Parties will include the foregoing provisions in every contract entered into in connection with the Project and every agreement with any Affiliate operating on the Property so that such provision will be binding upon each contractor or Affiliate, as the case may be.

SECTION 11. ENVIRONMENTAL MATTERS

The Developer Parties hereby represent and warrant to the City that the Developer Parties have conducted environmental studies sufficient to conclude that the Project may be constructed, completed and operated in accordance with all Environmental Laws and this Agreement and all Exhibits attached hereto, the Scope Drawings, Plans and Specifications and all amendments thereto, and the Redevelopment Plan.

Without limiting any other provisions hereof, the Developer Parties agree to indemnify, defend and hold the City harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses or claims of any kind whatsoever including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws incurred, suffered by or asserted against the City as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of the Developer Parties: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Material from (A) all or any portion of the Property or (B) any other real property in which the Developer Parties or any person directly or indirectly controlling, controlled by or under common control with the Developer Parties, holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust in which the beneficial interest is owned, in whole or in part, by the Developer Parties), or (ii) any liens against the Property permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligation of the City or the Developer Parties or any of its Affiliates under any Environmental Laws relating to the Property.

SECTION 12. INSURANCE

The Developer must provide and maintain, at Developer's own expense, or cause to be provided and maintained during the term of this Agreement, the insurance coverage and requirements specified below, insuring all operations related to the Agreement.

(a) Prior to execution and delivery of this Agreement.

(i) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident, illness or disease.

(ii) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations,

products/completed operations independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

(iii) All Risk Property

All Risk Property Insurance at replacement value of the property to protect against loss of, damage to, or destruction of the building/facility. The City is to be named as an additional insured and loss payee/mortgagee if applicable.

(b) Construction. Prior to the construction of any portion of the Project, Developer will cause its architects, contractors, subcontractors, project managers and other parties constructing the Project to procure and maintain the following kinds and amounts of insurance:

(i) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$ 500,000 each accident, illness or disease.

(ii) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations (for a minimum of two (2) years following project completion), explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

(iii) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

(iv) Railroad Protective Liability

When any work is to be done adjacent to or on railroad or transit property, Developer must provide cause to be provided with respect to the operations that Contractors perform, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

(v) All Risk /Builders Risk

When Developer undertakes any construction, including improvements, betterments, and/or repairs, the Developer must provide or cause to be provided All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the project. The City of Chicago is to be named as an additional insured and loss payee/mortgagee if applicable.

(vi) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$1,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

(vii) Valuable Papers

When any plans, designs, drawings, specifications and documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever and must have limits sufficient to pay for the re-creation and reconstruction of such records.

(viii) Contractors Pollution Liability

When any remediation work is performed which may cause a pollution exposure, the Developer must cause remediation contractor to provide Contractor Pollution Liability covering bodily injury, property damage and other losses caused by pollution conditions that arise from the contract scope of work with limits of not less than \$1,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City of Chicago is to be named as an additional insured.

(c) Post Construction:

(i) All Risk Property Insurance at replacement value of the property to protect against loss of, damage to, or destruction of the building/facility. The City is to be named as an additional insured and loss payee/mortgagee if applicable.

(d) Other Requirements:

The Developer must furnish the City of Chicago, Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this

Agreement. The Developer must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to closing. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Developer is not a waiver by the City of any requirements for the Developer to obtain and maintain the specified coverages. The Developer shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work and/or terminate agreement until proper evidence of insurance is provided.

The insurance must provide for 30 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Developer and Contractors.

The Developer hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Developer in no way limit the Developer's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Developer under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If Developer is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

The Developer must require all contractors and subcontractors to provide the insurance required herein, or Developer may provide the coverages for contractors and subcontractors. All Contractors and subcontractors are subject to the same insurance requirements of Developer unless otherwise specified in this Agreement.

If Developer, any contractor or subcontractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

The City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

SECTION 13. INDEMNIFICATION

13.01 General Indemnity. Developer Parties agree to indemnify, pay, defend and hold the City, and its elected and appointed officials, employees, agents and Affiliates (individually an "**Indemnitee**," and collectively the "**Indemnitees**") harmless from and against, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (and including without limitation, the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnities shall be designated a party thereto), that may be imposed on, suffered, incurred by or asserted against the Indemnitees in any manner relating or arising out of:

(i) the Developer Parties' failure to comply with any of the terms, covenants and conditions contained within this Agreement; or

(ii) the Developer Parties' or any contractor's failure to pay contractors, subcontractors or materialmen in connection with the TIF-Funded Improvements or any other Project improvement; or

(iii) the existence of any material misrepresentation or omission in this Agreement, the Redevelopment Plan or any other document related to this Agreement that is the result of information supplied or omitted by the Developer Parties or any Affiliate Developer Parties or any agents, employees, contractors or persons acting under the control or at the request of the Developer Parties or any Affiliate of Developer Parties; or

(iv) the Developer Parties' failure to cure any misrepresentation in this Agreement or any other agreement relating hereto;

provided, however, that Developer Parties shall have no obligation to an Indemnitee arising from the wanton or willful misconduct of that Indemnitee. To the extent that the preceding sentence may be unenforceable because it violates any law or public policy, Developer Parties shall contribute the maximum portion that they are permitted to pay and satisfy under the applicable law, to the payment and satisfaction of all indemnified liabilities incurred by the Indemnitees or any of them. The provisions of the undertakings and indemnification set out in this **Section 13.01** shall survive the termination of this Agreement.

SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT

14.01 Books and Records. The Developer Parties shall keep and maintain separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the total actual cost of the Project and the disposition of all funds from whatever source allocated thereto, and to monitor the Project. All such books, records and other documents, including but not limited to the Developer Parties' loan statements, if any, General Contractor's and subcontractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, shall be available at the Developer Parties' offices for inspection, copying, audit and examination by an authorized representative of the City, at the Developer Parties' expense. The Developer Parties shall incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by the Developer Parties with respect to the Project.

14.02 Inspection Rights. Upon three (3) business days' notice, any authorized representative of the City has access to all portions of the Project and the Property during normal business hours for the Term of the Agreement.

SECTION 15. DEFAULT AND REMEDIES

15.01 Events of Default. The occurrence of any one or more of the following events, subject to the provisions of **Section 15.03**, shall constitute an "**Event of Default**" by the Developer Parties hereunder:

(a) the failure of the Developer Parties to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Developer Parties under this Agreement or any related agreement related to the Project;

(b) the failure of the Developer Parties to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Developer Parties under any other agreement related to the Project with any person or entity if such failure may have a material adverse effect on the Developer Parties' business, property, assets, operations or condition, financial or otherwise, and the Project;

(c) the making or furnishing by the Developer Parties to the City of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement which is untrue or misleading in any material respect;

(d) except as otherwise permitted hereunder, the creation (whether voluntary or involuntary) of, or any attempt to create, any lien or other encumbrance upon the Property, including any fixtures now or hereafter attached thereto, other than the Permitted Liens, or the making or any attempt to make any levy, seizure or attachment thereof;

(e) the commencement of any proceedings in bankruptcy by or against the Developer Parties or for the liquidation or reorganization of the Developer Parties, or alleging that the Developer Parties are insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of the Developer Parties' debts, whether under the United States Bankruptcy Code or under any other state or federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving the Developer Parties; provided, however, that if such commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within ninety (90) days after the commencement of such proceedings;

(f) the appointment of a receiver or trustee for the Developer Parties, for any substantial part of the Developer Parties' assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of the Developer Parties; provided, however, that if such appointment or commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within ninety (90) days after the commencement thereof;

(g) the entry of any judgment or order against the Developer Parties which remains unsatisfied or undischarged and in effect for ninety (90) days after such entry without a stay of enforcement or execution;

(h) the occurrence of an event of default under the Lender Financing, which default is not cured within any applicable cure period;

(i) the dissolution of the Developer Parties or the death of any natural person who owns a material interest in the Developer Parties;

(j) the institution in any court of a criminal proceeding (other than a misdemeanor) against the Developer Parties, or any natural person who owns a material interest in the Developer Parties, which is not dismissed within thirty (30) days, or the indictment of the Developer Parties or any natural person who owns a material interest in the Developer Parties, for any crime (other than a misdemeanor); or

(k) prior to the expiration of the Term of the Agreement, the sale or transfer of a majority of the ownership interests of the Developer Parties without the prior written consent of the City, except as permitted pursuant to **Section 4.08(c)**.

For purposes of **Sections 15.01(i)** and **15.01(j)** hereof, a person with a material interest in the Developer shall be one owning in excess of thirty-three percent (33%) of the Developer's member interests.

15.02 Remedies. Upon the occurrence of an Event of Default, the City may terminate this Agreement and all related agreements and may suspend disbursement of City Funds. Additionally, upon the occurrence of an Event of Default in relation to **Section 8.19**, the Developer Parties or Affiliates shall reimburse the City all of the City Funds disbursed to any one of the Developer Parties to date. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to reimbursement of all or part of the City Funds, injunctive relief or the specific performance of the agreements contained herein.

15.03 Curative Period.

(a) In the event the Developer Parties shall fail to perform a monetary covenant which Developer Parties are required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer Parties have failed to perform such monetary covenant within ten (10) days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant. In the event the Developer Parties shall fail to perform a non-monetary covenant which the Developer Parties are required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer Parties have failed to cure such default within thirty (30) days of its receipt of a written notice from the City specifying the nature of the default; provided; however, with respect to those non-monetary defaults which are not capable of being cured within such thirty (30) day period, the Developer Party shall not be deemed to have committed an Event of Default under this Agreement if they have commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

SECTION 16. MORTGAGING OF THE PROJECT

All mortgages or deeds of trust in place as of the date hereof with respect to the Property or any portion thereof are listed on **Exhibit G** hereto (including but not limited to mortgages made prior to or on the date hereof in connection with Lender Financing) and are referred to herein as the "**Existing Mortgages**." Any mortgage or deed of trust that the Developer Parties may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof is referred to herein as a "**New Mortgage**." Any New Mortgage that the Developer Parties may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof with the prior written consent of the City is referred to herein as a "**Permitted Mortgage**." It is hereby agreed by and between the City and the Developer Parties as follows:

(a) In the event that a mortgagee or any other party shall succeed to the Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under a New Mortgage (other than a Permitted Mortgage), whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest hereunder in accordance with **Section 18.15** hereof, the City may, but shall not be obligated to, attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement and, unless so recognized by the City as the successor in interest, such party shall be entitled to no rights or benefits under this Agreement, but such party shall be bound by those provisions of this Agreement that are covenants expressly running with the land.

(b) In the event that any mortgagee shall succeed to the Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under an Existing Mortgage or a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest hereunder in accordance with **Section 18.15** hereof, the City hereby agrees to attorn to and recognize such party as the successor in interest to the Developer Parties for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of the Developer Parties" hereunder; provided, however, that, notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of the Developer Parties' interest under this Agreement, such party has no liability under this Agreement for any Event of Default of the Developer Parties which accrued prior to the time such party succeeded to the interest of the Developer Parties under this Agreement, in which case the Developer Parties shall be solely responsible. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage does not expressly accept an assignment of the Developer Parties' interest hereunder, such party shall be entitled to no rights and benefits under this Agreement, and such party shall be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land.

(c) Prior to the issuance by the City to the Developer Parties of a Certificate pursuant to **Section 7** hereof, no New Mortgage shall be executed with respect to the Property or any portion thereof without the prior written consent of the Commissioner of DPD.

SECTION 17. NOTICE

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified mail, return receipt requested.

If to the City: City of Chicago
Department of Planning and Development
121 North LaSalle Street, Room 1000
Chicago, Illinois 60602
Attention: Commissioner

With Copies To: City of Chicago
Department of Law
Finance and Economic Development Division
121 North LaSalle Street, Room 600
Chicago, Illinois 60602

If to the Developer: Southbridge 4 Master Owner LLC
c/o The Community Builders
135 South LaSalle Street, Suite 3350
Chicago, Illinois 60603
Attention: Director of Development

With copies to: Applegate & Thorne-Thomsen, P.C.
425 S. Financial Place, Suite 1900
Chicago, Illinois 60605
Attention: Paul Davis

And: DLA Piper LLP (US)
444 West Lake Street, Suite 900
Chicago, Illinois 60606
Attention: Mariah DiGrino, Esq.

And: Urban Investment Group
c/o Goldman Sachs Group
200 West Street
New York, New York 10282
Attention: Urban Investment Group Portfolio Manager

And: Sidley Austin LLP
One South Dearborn Street
Chicago, Illinois 60603
Attention: Philip C. Spahn

If to TCB: TCB Development Services LLC
c/o The Community Builders
135 South LaSalle Street, Suite 3350

Chicago, Illinois 60603
Attention: Director of Development

With copies to:

Applegate & Thorne-Thomsen, P.C.
425 S. Financial Place, Suite 1900
Chicago, Illinois 60605
Attention: Paul Davis

And:

DLA Piper LLP (US)
444 West Lake Street, Suite 900
Chicago, Illinois 60606
Attention: Mariah DiGrino, Esq.

If to Southbridge 1-4:

Southbridge 1-4 Housing LLC
c/o The Community Builders
135 South LaSalle Street, Suite 3350
Chicago, Illinois 60603
Attention: Director of Development

With copies to:

Applegate & Thorne-Thomsen, P.C.
425 S. Financial Place, Suite 1900
Chicago, Illinois 60605
Attention: Paul Davis

And:

DLA Piper LLP (US)
444 West Lake Street, Suite 900
Chicago, Illinois 60606
Attention: Mariah DiGrino, Esq.

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand, or request sent pursuant to clause (a) hereof shall be deemed received upon such personal service. Any notice, demand or request sent pursuant to clause (b) shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands or requests sent pursuant to subsection (c) shall be deemed received two (2) business days following deposit in the mail.

SECTION 18. MISCELLANEOUS

18.01 Amendment. This Agreement and the Exhibits attached hereto may not be amended or modified without the prior written consent of the parties hereto; provided, however, that the City, in its sole discretion, may amend, modify or supplement **Exhibit D** hereto without the consent of any party hereto. It is agreed that no material amendment or change to this Agreement shall be made or be effective unless ratified or authorized by an ordinance duly adopted by the City Council. The term "material" for the purpose of this **Section 18.01** shall be defined as any deviation from the terms of the Agreement which operates to cancel or otherwise reduce any developmental, construction or job-creating obligations of Developer Parties (including those set forth in **Sections 10.02 and 10.03** hereof) by more than five percent (5%) or materially changes the Project site or character of the Project or any activities undertaken by Developer Parties affecting the Project site, the Project, or both, or increases any time agreed for performance by the Developer Parties by more than ninety (90) days.

18.02 Entire Agreement. This Agreement (including each Exhibit attached hereto, which is hereby incorporated herein by reference) constitutes the entire Agreement between the parties hereto and it supersedes all prior agreements, negotiations and discussions between the parties relative to the subject matter hereof.

18.03 Limitation of Liability. No member, official or employee of the City shall be personally liable to the Developer Parties or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Developer Parties from the City or any successor in interest or on any obligation under the terms of this Agreement.

18.04 Further Assurances. The Developer Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

18.05 Waiver. Waiver by the City or the Developer Parties with respect to any breach of this Agreement shall not be considered or treated as a waiver of the rights of the respective party with respect to any other default or with respect to any particular default, except to the extent specifically waived by the City or the Developer Parties in writing. No delay or omission on the part of a party in exercising any right shall operate as a waiver of such right or any other right unless pursuant to the specific terms hereof. A waiver by a party of a provision of this Agreement shall not prejudice or constitute a waiver of such party's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by a party, nor any course of dealing between the parties hereto, shall constitute a waiver of any such parties' rights or of any obligations of any other party hereto as to any future transactions.

18.06 Remedies Cumulative. The remedies of a party hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such party unless specifically so provided herein.

18.07 Disclaimer. Nothing contained in this Agreement nor any act of the City shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City.

18.08 Headings. The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

18.09 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

18.10 Severability. If any provision in this Agreement, or any paragraph, sentence, clause, phrase, word or the application thereof, in any circumstance, is held invalid, this Agreement shall be construed as if such invalid part were never included herein and the remainder of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

18.11 Conflict. In the event of a conflict between any provisions of this Agreement and the provisions of the TIF Ordinances, such ordinance(s) shall prevail and control.

18.12 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to its conflicts of law principles.

18.13 Form of Documents. All documents required by this Agreement to be submitted, delivered or furnished to the City shall be in form and content satisfactory to the City.

18.14 Approval. Wherever this Agreement provides for the approval or consent of the City, DPD or the Commissioner, or any matter is to be to the City's, DPD's or the Commissioner's satisfaction, unless specifically stated to the contrary, such approval, consent or satisfaction shall be made, given or determined by the City, DPD or the Commissioner in writing and in the reasonable discretion thereof. The Commissioner or other person designated by the Mayor of the City shall act for the City or DPD in making all approvals, consents and determinations of satisfaction, granting the Certificate or otherwise administering this Agreement for the City.

18.15 Assignment. The Developer Parties may not sell, assign or otherwise transfer their interest in this Agreement in whole or in part without the written consent of the City, other than as promised in Section 4.08 or otherwise permitted herein; provided, however, that the Developer Parties may collaterally assign their respective interests in this Agreement to any of its lenders identified to the City as of the Closing Date, or to any lenders identified after the Closing Date and approved by the City, if any such lenders require such collateral assignment. Any successor in interest to the Developer Parties under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to **Sections 8.18, 8.19 and 8.20** hereof, for the Term of the Agreement. The Developer Parties consent to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

18.16 Binding Effect. This Agreement shall be binding upon the Developer Parties, the City and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of the Developer Parties, the City and their respective successors and permitted assigns (as provided herein). Except as otherwise provided herein, this Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party to this Agreement

and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right.

18.17 Force Majeure. Neither the City, the Developer Parties nor any successor in interest to any of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations hereunder. The individual or entity relying on this section with respect to any such delay shall, upon the occurrence of the event causing such delay, immediately give written notice to the other parties to this Agreement. The individual or entity relying on this section with respect to any such delay may rely on this section only to the extent of the actual number of days of delay effected by any such events described above.

18.18 Exhibits. All of the exhibits attached hereto are incorporated herein by reference.

18.19 Business Economic Support Act. Pursuant to the Business Economic Support Act (30 ILCS 760/1 et seq.), if the Developer Parties are required to provide notice under the WARN Act, the Developer Parties shall, in addition to the notice required under the WARN Act, provide at the same time a copy of the WARN Act notice to the Governor of the State, the Speaker and Minority Leader of the House of Representatives of the State, the President and minority Leader of the Senate of State, and the Mayor of each municipality where the Developer Parties has locations in the State. Failure by the Developer Parties to provide such notice as described above may result in the termination of all or a part of the payment or reimbursement obligations of the City set forth herein.

18.20 Venue and Consent to Jurisdiction. If there is a lawsuit under this Agreement, each party hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois and the United States District Court for the Northern District of Illinois.

18.21 Costs and Expenses. In addition to and not in limitation of the other provisions of this Agreement, Developer Parties agree to pay upon demand the City's out-of-pocket expenses, including attorney's fees, incurred in connection with the enforcement of the provisions of this Agreement. This includes, subject to any limits under applicable law, attorney's fees and legal expenses, whether or not there is a lawsuit, including attorney's fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services. Developer Parties also will pay any court costs, in addition to all other sums provided by law.

18.22 Business Relationships. The Developer Parties acknowledge (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that Developer Parties have read such provision and understand that pursuant to such Section 2-156-030 (b), it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a "**Business Relationship**" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council

meeting or to vote on any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (C) that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. The Developer Parties hereby represent and warrant that, to the best of their knowledge after due inquiry, no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

18.23 Debarment Certification. Failure by the Developer Parties or any controlling person of either, as defined in Section 1-23-010 of the Municipal Code, thereof to maintain eligibility to do business with the City as required by Section 1-23-030 of the Municipal Code shall be grounds for termination of this Agreement and the transactions contemplated thereby.

18.24 Inspector General and Legislative Inspector General. It is the duty of the Developer Parties, any subgrantee, bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of any such subgrantee, bidder, proposer, contractor, subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. The Developer Parties represent that they understand and will abide by all provisions of Chapter 2-56 of the Municipal Code and that the Developer Parties will inform subcontractors of this provision and require their compliance.

It is the duty of the Developer Parties, any subgrantee, bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of the Developer Parties, any such subgrantee, bidder, proposer, contractor, subcontractor or such applicant to cooperate with the Legislative Inspector General in any investigation undertaken pursuant to Chapter 2-55 of the Municipal Code. The Developer Parties represent that they understand and will abide by all provisions of Chapter 2-55 of the Municipal Code and that the Developer Parties will inform subcontractors of this provision and require their compliance.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

DEVELOPER:

By: **SOUTHBRIDGE 4 MASTER OWNER LLC**, an Illinois limited liability company

By: Ickes Master Developer JV, LLC, its sole member

By: The Community Builders, Inc., its managing member

By: _____

Name: Will Woodley

Title: Authorized Agent

NOTARY CERTIFICATION

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do certify that _____, personally known to me to be the Authorized Agent of The Community Builders, Inc., the managing member of Ickes Master Developer JV, LLC, (the "Managing Member"), the sole and managing member of Southbridge 4 Master Owner LLC, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Authorized Agent, s/he signed and delivered the said instrument, pursuant to authority given by the members of the Managing Member as the free and voluntary act of such person, and as the free and voluntary act and deed of the Managing Member and Southbridge 4 Master Owner LLC, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this ____ day of _____, 20__.

Notary Public

My Commission Expires _____

(SEAL)

TCB:

TCB DEVELOPMENT SERVICES LLC, an Illinois limited liability company

By: The Community Builders, Inc., its sole member

By: _____
Name: Will Woodley
Its: Authorized Agent

NOTARY CERTIFICATION

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, _____, a notary public in and for the said County, in the State aforesaid, HEREBY CERTIFY that _____, personally known to me to be the Authorized Agent of The Community Builders, Inc., the sole member of TCB Development Services LLC, an Illinois limited liability company ("TCB"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that s/he signed, sealed, and delivered said instrument, pursuant to the authority given to her/him by the board of directors of The Community Builders, Inc., as her/his free and voluntary act and as the free and voluntary act of TCB, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this ____ day of _____, 20__.

Notary Public

My Commission Expires _____

(SEAL)

SOUTHBRIDGE 1-4:

SOUTHBRIDGE 1-4 LLC, an Illinois limited liability company

By: _____
Name: Will Woodley
Its: Authorized Agent

NOTARY CERTIFICATION

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, _____, a notary public in and for the said County, in the State aforesaid, HEREBY CERTIFY that _____, personally known to me to be the _____ of Southbridge 1-4 LLC, an Illinois limited liability company ("Southbridge"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that s/he signed, sealed, and delivered said instrument, pursuant to the authority given to her/him by the _____ of the _____, as her/his free and voluntary act and as the free and voluntary act of TCB, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this ____ day of _____, 20__.

Notary Public

My Commission Expires _____

(SEAL)

LIST OF EXHIBITS

Exhibit A	Redevelopment Area
Exhibit B	*Property Legal Description
Exhibit C	*TIF-Funded Improvements
Exhibit D	Redevelopment Plan
Exhibit E	Construction Contract
Exhibit F	Environmental Features
Exhibit G	*Permitted Liens
Exhibit H	*Project Budget
Exhibit I	Approved Prior Expenditures
Exhibit J	Opinion of Developer Parties' Counsel
Exhibit K	Requisition Form
Exhibit L	Prohibited Uses

(An asterisk (*) indicates which exhibits are to be recorded.)

EXHIBIT A

LEGAL DESCRIPTION OF AREA

See attached.

[NOT ATTACHED FOR ORDINANCE PURPOSES]

EXHIBIT B

PROPERTY LEGAL DESCRIPTION

PARCEL 2

THAT PART OF LOTS 1 THROUGH 12 (BOTH INCLUSIVE), OF LOTS 40 THROUGH 46 (BOTH INCLUSIVE), AND THE PART OF THE NORTH-SOUTH 15 FOOT WIDE PUBLIC ALLEY VACATED PER DOCUMENT NUMBER 15805877, RECORDED JANUARY 6, 1854, ALL IN BLOCK 10, IN UHLICH AND MUHLKE'S ADDITIONAL TO CHICAGO, A SUBDIVISION OF THE EAST HALF OF THE NORTHEAST QUARTER (EXCEPT THE SOUTH HALF OF THE SOUTH HALF THEREOF) IN SECTION 28, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 01 DEGREES 31 MINUTES 56 SECONDS EAST, ALONG AN ASSUMED BEARING, BEING THE EAST LINE OF SAID LOTS 1 THROUGH 12, ALSO BEING THE WEST LINE OF STATE STREET, 289.70 FEET; THENCE SOUTH 88 DEGREES 29 MINUTES 48 SECONDS WEST 116.21 FEET; THENCE NORTH 01 DEGREES 31 MINUTES 56 SECONDS WEST 74.55 FEET; THENCE SOUTH 88 DEGREES 28 MINUTES 04 SECONDS WEST 35.00 FEET; THENCE NORTH 01 DEGREE 31 MINUTES 56 SECONDS WEST 151.00 FEET; THENCE NORTH 88 DEGREES 28 MINUTES 04 SECONDS EAST 37.00 FEET; THENCE NORTH 01 DEGREE 31 MINUTES 56 SECONDS WEST 64.15 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 1; THENCE NORTH 88 DEGREES 29 MINUTES 48 SECONDS EAST ALONG SAID NORTH LINE, ALSO BEING THE SOUTH LINE OF W. 23RD STREET 114.21 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

SAID PARCEL CONTAINS 38,823 SQUARE FEET OR 0.891 ACRES, MORE OR LESS.

Common Addresses: 2302-2322 S. State Street, Chicago IL 60616

Residential Address: 2310 S. State Street, Chicago IL 60616

Retail Addresses: 2302 S. State Street, Chicago IL 60616;
2306 S. State Street, Chicago IL 60616;
2318 S. State Street, Chicago IL 60616;
2322 S. State Street, Chicago IL 60616

Management Address: n/a (in building B4)

Community Space Address: n/a (in building B4)

Property PINs: 17-28-218-028
17-28-218-029
17-28-218-030

EXHIBIT C

TIF-FUNDED IMPROVEMENTS

50% of the cost of construction of new housing units to be occupied by low-income households 65 ILCS 5/11-74.4-3(q)(11)(F)	\$6,234,626*
Costs of the construction of public works or improvements 65 ILCS 5/11-74.4-3(q)(4)	\$6,480,000
Property assembly costs, including, but not limited to, acquisition of land, demolition of buildings, site preparation, site improvements that serve as engineered barrier and the cleaning and grading of land 65 ILCS 5/11-74.4-3(q)(2)	\$4,200,000
Architecture design and supervision	\$306,340
TOTAL	\$17,226,022**

*note: if the City is unsuccessful in amending the TIF Plan to permit these costs as TIF Eligible prior to execution of this Agreement, these costs shall be replaced by acquisition costs as TIF-Funded Improvements

**Notwithstanding the total amount referenced above, the City Funds for the TIF-Funded Improvements shall not exceed the lesser of \$12,750,000 or 23.71% of the Project Budget.

EXHIBIT D

REDEVELOPMENT PLAN

See attached.

[NOT ATTACHED FOR ORDINANCE PURPOSES]

EXHIBIT E
CONSTRUCTION CONTRACT

See attached.

[NOT ATTACHED FOR ORDINANCE PURPOSES]

EXHIBIT F

ENVIRONMENTAL FEATURES

Building and exterior features:

- Green roof for 50% of the roof surface
- Minimum R-21 exterior wall insulation
- On site storm water detention. Efficient storm water movement will be incorporated into the design and layout of the site – in order to prevent heavy rains from overwhelming the City's sewer system
- Low VOC content in building materials
- Building Hot Water Tank
- LEED Certification

Unit features:

- VRF (Variable Refrigerant Flow) HVAC
- Energy Star programmable thermostats
- LED lighting fixtures in the units and common spaces
- Energy Star appliances in all units
- Low flow plumbing fixtures in kitchens and baths
- Low VOC paints in units and common areas

EXHIBIT G

PERMITTED LIENS

Those matters set forth as Schedule B title exceptions in the owner's title insurance policy issued by the Title Company as of the date hereof, but only so long as applicable title endorsements issued in conjunction therewith on the date hereof, if any, continue to remain in full force and effect.

EXHIBIT H
PROJECT BUDGET

SOURCES

IHDA's Tax Exempt Bonds	\$7,400,000
Mezzanine Financing	\$1,800,000
City Multifamily Housing Loan	\$2,397,958
IHDA Soft Funds	\$4,875,000
CHA Loan	\$11,355,106
DTC Equity	\$2,299,909
TIF Funding	\$12,750,000
Accrued Soft Interest	\$651,685
US Bancorp Donation	\$10,000
Deferred Dev Fee	\$1,382,349
Manager Equity	\$100
4% LIHTC Equity	\$8,831,300
TOTAL	\$53,753,407

USES

Construction	\$38,324,250
Const. Contingency	\$1,484,647
Architect's Fee	\$1,237,372
Loan Origination Fee	\$291,396
Legal Fees	\$807,450
Marketing Fees	\$444,526
Loan Interest	\$2,380,824
Environmental	\$8,918
Reserves	\$1,563,571
Tax Credit Allocation Fees	\$185,432
Developer Fee	\$4,568,456
Other Soft Costs	\$2,456,475
TOTAL	\$53,753,405

EXHIBIT I

APPROVED PRIOR EXPENDITURES

None.

EXHIBIT J

OPINION OF DEVELOPER PARTIES' COUNSEL

[To be retyped on the Developer Parties' Counsel's letterhead]

City of Chicago
121 North LaSalle Street
Chicago, IL 60602

ATTENTION: Corporation Counsel

Ladies and Gentlemen:

[Note: Southbridge 1-4 Housing LLC to be added to opinion prior to Closing Date]

I have acted as counsel to Southbridge 4 Master Owner LLC, an Illinois limited liability company (the "Developer") and TCB Development Services LLC, an Illinois limited liability company, ("TCB") in connection with the acquisition of certain land and the construction of certain facilities thereon located in the 24th/Michigan Redevelopment Project Area (the "Project"). In that capacity, I have examined, among other things, the following agreements, instruments, and documents of even date herewith, hereinafter referred to as the "Documents":

- (a) Southbridge 4 Master Owner LLC Redevelopment Agreement (the "Agreement") of even date herewith, executed by the Developer, TCB, Southbridge 1-4 and the City of Chicago (the "City"); and
- (b) all other agreements, instruments and documents executed in connection with the foregoing.

In addition to the foregoing, I have examined:

- (a) the original or certified, conformed or photostatic copies of (1) the Developer's (i) Articles of Organization, (ii) operating agreement, (iii) By-Laws, if any, (iv) the certificate of good standing, and (v) records of all members' proceedings relating to the Project; and (2) TCB's (i) Articles of Organization, (ii) operating agreement, (iii) By-Laws, if any, (iv) the certificate of good standing, and (v) records of all members' proceedings relating to the Project; and
- (b) such other documents, records and legal matters as I have deemed necessary or relevant for purposes of issuing the opinions hereinafter expressed.

In all such examinations, I have assumed the genuineness of all signatures (other than those of the Developer and TCB), the authenticity of documents submitted to us as originals and conformity to the originals of all documents submitted to us as certified, conformed or photo static copies.

Based on the foregoing, it is my opinion that:

1. The Developer is a limited liability company, duly organized and validly existing under the laws of its state of formation, has full power and authority to own and lease its properties and to carry on its business as presently conducted, and is in good standing and duly qualified to do business as a limited liability company under the laws of every state in which the conduct of its affairs or the ownership of its assets requires such qualification, except for those states in which its failure to qualify to do business would not have a material adverse effect on it or its business. TCB is a limited liability company, duly organized, validly existing and in good standing under the laws of its state of incorporation, has full power and authority to own and lease its properties and to carry on its business as presently conducted, and is in good standing and duly qualified to do business as a foreign corporation under the laws of every state in which the conduct of its affairs or the ownership of its assets requires such qualification, except for those states in which its failure to qualify to do business would not have a material adverse effect on it or its business.

2. The Developer and TCB have full right, power and authority to execute and deliver the Documents to which they are a party and to perform their obligations thereunder. Such execution, delivery and performance will not conflict with, or result in a breach of, the Developer's operating agreement or TCB's articles of organization, or result in a breach or other violation of any of the terms, conditions or provisions of any law or regulation, order, writ, injunction or decree of any court, government or regulatory authority, or, to the best of my knowledge after diligent inquiry, any of the terms, conditions or provisions of any agreement, instrument or document to which the Developer or TCB is a party or by which the Developer or TCB or its properties is bound. To the best of my knowledge after diligent inquiry, such execution, delivery and performance will not constitute grounds for acceleration of the maturity of any agreement, indenture, undertaking or other instrument to which the Developer or TCB is a party or by which it or any of its property may be bound, or result in the creation or imposition of (or the obligation to create or impose) any lien, charge or encumbrance on, or security interest in, any of its property pursuant to the provisions of any of the foregoing, other than liens or security interests in favor of the lender providing Lender Financing (as defined in the Agreement).

3. The execution and delivery of each Document and the performance of the transactions contemplated thereby have been duly authorized and approved by all requisite action on the part of the Developer and TCB.

4. Each of the Documents to which the Developer or TCB is a party has been duly executed and delivered by a duly authorized officer of the Developer or TCB, as applicable, and each such Document constitutes the legal, valid and binding obligation of the Developer or TCB enforceable in accordance with its terms, except as limited by applicable bankruptcy, reorganization, insolvency or similar laws affecting the enforcement of creditors' rights generally.

5. To the best of my knowledge after diligent inquiry, no judgments are outstanding against the Developer or TCB nor is there now pending or threatened, any litigation, contested claim or governmental proceeding by or against the Developer or TCB or affecting the Developer or TCB or its property, or seeking to restrain or enjoin the performance by the Developer or TCB of the Agreement or the transactions contemplated by the Agreement, or contesting the validity thereof. To the best of my knowledge after diligent inquiry, the Developer

or TCB is not in default with respect to any order, writ, injunction or decree of any court, government or regulatory authority or in default in any respect under any law, order, regulation or demand of any governmental agency or instrumentality, a default under which would have a material adverse effect on the Developer or, TCB or its business.

6. To the best of my knowledge after diligent inquiry, there is no default by the Developer or TCB or any other party under any material contract, lease, agreement, instrument or commitment to which the Developer or TCB is a party or by which the company or its properties is bound.

7. To the best of my knowledge after diligent inquiry, all of the assets of the Developer or TCB are free and clear of mortgages, liens, pledges, security interests and encumbrances except for those specifically set forth in the Documents.

8. The execution, delivery and performance of the Documents by the Developer or TCB have not and will not require the consent of any person or the giving of notice to, any exemption by, any registration, declaration or filing with or any taking of any other actions in respect of, any person, including without limitation any court, government or regulatory authority.

9. To the best of my knowledge after diligent inquiry, the Developer or TCB own or possess or is licensed or otherwise have the right to use all licenses, permits and other governmental approvals and authorizations, operating authorities, certificates of public convenience, goods carriers permits, authorizations and other rights that are necessary for the operation of its business.

10. A federal or state court sitting in the State of Illinois and applying the choice of law provisions of the State of Illinois would enforce the choice of law contained in the Documents and apply the law of the State of Illinois to the transactions evidenced thereby.

I am admitted to practice in the State of Illinois and I express no opinion as to any laws other than federal laws of the United States of America and the laws of the State of Illinois.

This opinion is issued at the Developer's and TCB's request for the benefit of the City and its counsel, and may not be disclosed to or relied upon by any other person.

Very truly yours,

By: _____

Name: _____

By: _____

Subscribed and sworn before me this ____ day of _____
_____.

My commission expires: _____

Agreed and accepted:

Name: _____

Title: _____

City of Chicago
Department of Planning and Development

EXHIBIT L

PROHIBITED USES

[Note: if approved by DPD, prior to closing, revisions may be made to this list]

- Adult oriented businesses
- Strip clubs
- Astrology, card-reading, palm-reading or fortune telling businesses
- Currency exchanges
- Houses of worship
- Inter-track wagering facilities
- Laundromats
- Pawn shops
- Pay day loan stores/predatory lenders
- Tattoo parlors
- Bingo parlors
- Game rooms or arcades
- Night clubs or discotheques
- Flea markets
- Junkyard or recycling center
- Automobile, truck, motorcycle, trailer or recreational vehicle sale, display, or repair
- Mortuaries or funeral homes
- Second hand stores or thrift shops
- Liquidators
- Beauty shops, beauty supply stores, barber shops, nail salons
- Taverns
- Package liquor stores
- Gasoline service station
- Discounters occupying less than 25,000 square feet
- General merchandise discounters whose goods generally have price points that range from under one dollar to ten dollars including by way of example but not by limitation Family Dollar, Dollar Tree and Dollar General

17

CHICAGO June 12, 2019

To the President and Members of the City Council:

Your Committee on Finance having had under consideration a substitute ordinance authorizing the approval of Amendment Number 2 to the 24th/Michigan Redevelopment Project and Plan and authorizing the Commissioner of the Department of Planning and Development to enter into and execute a Redevelopment Agreement with Southbridge 4 Master Owner, LLC.

O2019-3236

Having had the same under advisement, begs leave to report and recommend that your Honorable Body pass the proposed Substitute Ordinance Transmitted Herewith.

This recommendation was concurred in by _____ (a viva voce vote of members of the committee with _____ dissenting vote(s).

Respectfully submitted

(signed) Scott Wagoner

Chairman